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Welcome to the first edition of the Herbert Smith Freehills guide to "Financial Services Regulation in Asia Pacific", which is intended to provide business people and lawyers with concise information on the identity, jurisdiction and powers of the key financial services regulators in Asia Pacific.

This guide, which covers 14 jurisdictions in the Asia Pacific region, has been compiled by our network of Herbert Smith Freehills regulatory specialists, as well as local counsel. We would like to express our gratitude to the local counsel who have provided input on their respective jurisdictions.

Increased regulation and enforcement is a fact of life for the financial services industry in Asia Pacific. We are also seeing instances of cross-jurisdictional involvement by regulators. We hope that this guide will be a useful first resource and we look forward to assisting you with any issues that may arise.

As always, we welcome feedback from you. Please contact our network of Herbert Smith Freehills lawyers listed on pages 4-5 of this guide (or your usual contacts) if you have any suggestions, comments or questions.

The information in this guide is current to 1 September 2014. Please note that this guide is for reference purposes only and is not legal advice. We recommend that you seek specific legal advice before taking any action based on this publication.

This guide complements the other titles in the Herbert Smith Freehills series, including, in particular, the Guide to Handling Price Sensitive Information and the Guide to Privilege in Asia Pacific. A full list of our Asia publications can be found on our website at www.herbertsmithfreehills.com/insights-guides.

If you would like a hard copy of any of our publications please email asia.publications@hsf.com.
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1. WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN AUSTRALIA?

The main bodies are:
- Australian Securities and Investments Commission (ASIC);
- Australian Prudential Regulation Authority (APRA); and
- Australian Transaction Reports and Analysis Centre (AUSTRAC).

Other relevant regulatory bodies not dealt with in this chapter include the Reserve Bank of Australia and the Australian Securities Exchange.

2. WHAT DOES EACH OF THESE BODIES REGULATE?

ASIC regulates corporate governance, financial services, financial markets and consumer protection in credit. ASIC also regulates trading on Australia’s financial markets.

APRA is the prudential regulator for the Australian financial services industry, with jurisdiction over the prudential conduct of banks, credit unions, building societies, general insurance companies, reinsurance companies, life insurance, friendly societies and APRA-regulated superannuation trustees.

AUSTRAC is Australia’s anti-money laundering and counter-terrorism financing regulator.

3. WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN AUSTRALIA?

The source of ASIC’s power to regulate financial services is principally found in the Corporations Act 2001 (Corporations Act) and the Australian Securities and Investments Commission Act 2001 (ASIC Act). In addition, ASIC derives its power to regulate from the following legislation:
- Business Names Registration Act 2011 (Cth);
- Insurance Contracts Act 1984 (Cth);
- Superannuation (Resolution of Complaints) Act 1993 (Cth);
- Superannuation Industry (Supervision) Act 1993 (Cth) (SIS Act);
- Retirement Savings Accounts Act 1997 (Cth) (RSA Act);
- Life Insurance Act 1995 (Cth) (Life Insurance Act); and
- National Consumer Credit Protection Act 2009 (Cth).

The source of APRA’s power to regulate financial services is principally found in the Australian Prudential Regulation Authority Act 1998 (APRA Act). In addition, APRA derives its power to regulate from legislation including:
- Banking Act 1959 (Cth) (Banking Act);
- Financial Sector (Shareholdings) Act 1998 (Cth);
- Financial Sector (Collection of Data) Act 2001 (Cth);
- Insurance Act 1973 (Cth) (Insurance Act);
- Life Insurance Act;
- Insurance Acquisitions and Takeovers Act 1991 (Cth);
- SIS Act;
- RSA Act; and
- various “prudential standards”.

The source of AUSTRAC’s power to regulate financial services can be found in the Anti-Money Laundering and Counter Terrorism Financial Act 2006 (Cth) (AML/CTF Act), Financial Transaction Reports Act 1988, and related rules.

4. DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?

No. While generally speaking the regulators described above may impose administrative sanctions on licensees, registrants or other holders of regulatory permission, the particular types of sanctions that they may impose are different and will depend on the legislation which grants that particular permission and grants the particular power to impose the sanctions.

Each of the regulators has the ability to seek civil remedies (such as injunctions), and civil penalties (a form of remedy which is a mid-level remedy between civil and criminal remedies).

In some cases, multiple regulators will have regulatory oversight over particular conduct, requiring them to communicate about how to undertake their regulatory functions without duplication.

Each of the regulators may also be involved in investigating matters which may be referred to prosecutorial agencies in Australia, such as the various State or Commonwealth offices of the Directors of Public Prosecutions (DPP).
5. WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?

ASIC

ASIC has powers to investigate in the following circumstances:

- a suspected contravention of laws that concerns the management or affairs of a body corporate or managed investment scheme, or involves fraud or dishonesty and relates to a body corporate or managed investment scheme or financial products;
- where it has reason to suspect unacceptable circumstances or a contravention of any of the legislation from which it derives its power to regulate;
- as directed by the minister referred to in the ASIC Act (who, in practice, has been the Treasurer or the Assistant Treasurer of the Australian government) (Minister); and
- where a receiver/administrator/managing controller has lodged a report relating to an offence in relation to the corporation they have been appointed to, involving a past or present officer, employee, member, or where the money or property of a corporation has been misapplied or retained, or where there may have been negligence, breach of duty or breach of trust.

In relation to the first two circumstances above, where certain preconditions are satisfied, the scope of ASIC’s investigation can go beyond the suspected contravention so as to enable performance of its functions under the ASIC Act.

ASIC has powers to:

- require persons to attend an examination to answer questions on oath or affirmation and provide all reasonable assistance with the investigation;
- inspect books required to be kept by the Corporations Act;
- require production of information and books;
- disclose information, such as transcripts of compulsory examinations and related books to a person’s lawyer if the lawyer satisfies ASIC that the person is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination relates (see Question 8 below);
- apply for search warrants to seize books; and
- in certain circumstances, access speech, data and other communications collected by the Australian Federal Police pursuant to a telecommunications interception warrant under the Telecommunications (Interception and Access) Act 1979 (Cth) (TIA Act) (such a warrant would be issued by an eligible judge or member of the Administrative Appeals Tribunal).

The Corporations Act defines “books” widely. The term includes a register, any other record of information, financial reports and records however compiled, recorded or stored and a document. Reference to “books” in this chapter is a reference to “books” as defined in the Corporations Act.

Intentional or reckless non-compliance with ASIC requirements about the production of books or the giving of information is an offence and can result in criminal penalties, including imprisonment.

APRA

APRA’s key investigatory functions include to:

- appoint a person to investigate and report on prudential matters in relation to certain bodies corporate if it is satisfied that such a report is necessary (failure to provide relevant records and information will incur penalties);
- investigate the affairs of authorised deposit-taking institutions;
- investigate designated security trust funds;
- investigate a “life company” (a company that is carrying on life insurance business in Australia) or a registered non-operating holding company;
- investigate superannuation entities;
- investigate retirement savings account providers; and
- apply for search warrants to seize books of a company.

Some of these powers may be used by APRA for general supervisory and monitoring purposes, for investigating purposes, or both.

Failure to comply with APRA requirements to produce information, books, accounts or documents is an offence.

AUSTRAC

AUSTRAC’s investigatory powers include general information gathering powers that allow the authorised officers of AUSTRAC to gather information and documents. Authorised AUSTRAC officers can:

- access the premises of cash dealers and solicitors and inspect, copy and take extracts of records and systems kept on such premises;
- apply for monitoring warrants and search premises under the monitoring warrants;
- use general monitoring powers such as searching the premises of a reporting entity for relevant records, as well as the power to inspect, copy and take extracts of relevant documents; and
- ask questions of occupiers of premises, or any person in or on the premises, and to require those persons to produce documents.

A person who/which fails to provide the required information or documents commits an offence and is subject to criminal penalties, including imprisonment.

6. ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?

There are no provisions which prevent a target of an investigation from informing other persons that they have been served with a Notice to Produce or other similar forms of investigatory document. In the case of a compulsory examination under the ASIC Act, the examinee may be directed by ASIC not to disclose any of the evidence given by him/her at the examination.

On the other hand, under the relevant legislation, ASIC is required to take reasonable measures to prevent disclosure of information given to it in confidence, and APRA and AUSTRAC must not disclose information given to them in confidence, unless it is lawful to do so. Lawful disclosure includes provision to other regulators, including foreign regulators, to enable or assist them in their functions.
ASIC's public policy is to make a statement about an investigation only when it is in the public interest to do so. ASIC will balance the potential benefits of public comment against the potential prejudice that may be caused to any affected individuals.

### 7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCrimINATION AND LEGAL PROFESSIONAL PRIVILEGE?

**ASIC and APRA**

Under their relevant statutes, ASIC and APRA may investigate by requiring parties to:

- attend compulsory examinations;
- produce or disclose information/documents/books; or
- comply with search warrants.

In addition to the ASIC Act and other statutes, the Australian Federal Police (at the request of ASIC or APRA) may seek judicial approval for search warrants under the *Crimes Act 1914 (Cth)* (Crimes Act) or *Proceeds of Crime Act 2002 (Cth)* (Proceeds of Crime Act). As discussed under Question 5 above, in certain circumstances, ASIC may access speech, data, and other communications collected by the Australian Federal Police pursuant to a telecommunications interception warrant under the TIA Act.

Parties responding to such investigations may be protected on the following basis:

- legal professional privilege (LPP);
- self-incrimination privilege;
- penalty privilege ie, privilege against exposure to a penalty – this privilege operates such that courts will not make an order for discovery or for the administration of interrogatories in favour of a person where the proceedings might result in a penalty or forfeiture (an example of such proceedings being those where ASIC seeks an order of the court to ban a person from being a company director); and
- "evidential immunity" – where information which is subject to self-incrimination privilege is obtained (lawfully under statutes) from a party but, under s.68 of the ASIC Act, is not admissible in subsequent criminal or penalty proceedings against the party (with the exception of perjury proceedings) (see Question 8 below).

The table below sets out the rights of and protections afforded to persons when responding to ASIC or APRA’s investigations. The rights and protections differ depending on the form of the investigation:

<table>
<thead>
<tr>
<th>COMPULSORY EXAMINATIONS</th>
<th>ASIC</th>
<th>APRA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can party refuse to answer on the basis of LPP?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Does party have &quot;evidential immunity&quot; in relation to &quot;use&quot; of information otherwise subject to LPP in criminal/penalty proceeding?</td>
<td>Yes:</td>
<td>Yes:</td>
</tr>
<tr>
<td></td>
<td>s.76(1)(d) ASIC Act</td>
<td>s.290(5) SIS Act</td>
</tr>
<tr>
<td></td>
<td>s.290(5) SIS Act</td>
<td>s.120(5) RSA Act</td>
</tr>
<tr>
<td>Can party refuse to answer on the basis of self-incrimination or penalty privilege?</td>
<td>No:</td>
<td>No:</td>
</tr>
<tr>
<td></td>
<td>s.68(1) ASIC Act</td>
<td>s.52F(1) Banking Act</td>
</tr>
<tr>
<td></td>
<td>s.287(1) SIS Act</td>
<td>s.38F(1) Insurance Act</td>
</tr>
<tr>
<td></td>
<td>s.117(1) RSA Act</td>
<td>s.156F(1) Life Insurance Act</td>
</tr>
<tr>
<td></td>
<td>s.287(1) SIS Act</td>
<td>s.287(1) SIS Act</td>
</tr>
<tr>
<td></td>
<td>s.117(1) RSA Act</td>
<td>s.117(1) RSA Act</td>
</tr>
</tbody>
</table>
**Does party have "evidential immunity" in relation to "use" of information otherwise subject to self-incrimination/penalty privilege in criminal/penalty proceeding?**

<table>
<thead>
<tr>
<th>Party</th>
<th>Yes, if party is a natural person (ie, not a corporation):</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASIC</strong></td>
<td>s.68(2)-(3) ASIC Act, ss.287(2), (2A), (3) SIS Act, ss.117(2)-(3) RSA Act</td>
</tr>
<tr>
<td><strong>APRA</strong></td>
<td>s.52F(2) Banking Act, s.38F(2) Insurance Act, s.156F(2) Life Insurance Act, ss.287(2), (2A), (3) SIS Act, ss.117(2)-(3) RSA Act</td>
</tr>
</tbody>
</table>

Note that except under the RSA Act, the immunity does not extend to “derivative use”/“secondary evidence” of the information.

**PRODUCTION/DISCLOSURE OF INFORMATION**

<table>
<thead>
<tr>
<th>Can party refuse to disclose on the basis of LPP?</th>
<th>Yes</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does party have &quot;evidential immunity&quot; in relation to &quot;use&quot; of information otherwise subject to LPP in criminal/penalty proceeding?</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

| Can party refuse to disclose on the basis of self-incrimination or penalty privilege? | No | No |

<table>
<thead>
<tr>
<th>Party</th>
<th>s.68(1) ASIC Act, s.287(1) SIS Act, s.117(1) RSA Act</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASIC</strong></td>
<td>s.14AD(5), 52F(1) Banking Act, s.38F(1) Insurance Act, s.156F(1) Life Insurance Act, s.287(1) SIS Act, s.117(1) RSA Act</td>
</tr>
<tr>
<td><strong>APRA</strong></td>
<td>s.287(2) SIS Act, s.117(2)-(3) RSA Act</td>
</tr>
</tbody>
</table>

Does party have "evidential immunity" in relation to "use" of information otherwise subject to self-incrimination/penalty privilege in criminal/penalty proceeding?

<table>
<thead>
<tr>
<th>Party</th>
<th>Yes, if party is a natural person (ie, not a corporation):</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASIC</strong></td>
<td>s.117(2) RSA Act</td>
</tr>
<tr>
<td><strong>APRA</strong></td>
<td>ss.14AD(6), 52F(2) Banking Act, s.38F(2) Insurance Act, s.156F(2) Life Insurance Act, s.117(3) RSA Act</td>
</tr>
</tbody>
</table>

No – “evidential immunity” only applies to “oral statement” or “signing a record”:

<table>
<thead>
<tr>
<th>Party</th>
<th>s.68(2) ASIC Act, s.287(2) SIS Act</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASIC</strong></td>
<td>s.38F(2) Insurance Act, s.156F(2) Life Insurance Act, s.117(2)-(3) RSA Act</td>
</tr>
<tr>
<td><strong>APRA</strong></td>
<td>s.287(2) SIS Act</td>
</tr>
</tbody>
</table>

**SEARCH WARRANTS TO SEIZE BOOKS**

<table>
<thead>
<tr>
<th>Can party resist complying with the search warrant on the basis of LPP?</th>
<th>Yes</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>For search warrants obtained under:</td>
<td>s.3ZX Crimes Act</td>
<td></td>
</tr>
<tr>
<td></td>
<td>s.264 Proceeds of Crime Act</td>
<td></td>
</tr>
</tbody>
</table>

| Can party resist complying with the search warrant on the basis of self-incrimination or penalty privilege? | No | No |

<table>
<thead>
<tr>
<th>Party</th>
<th>s.3ZX Crimes Act</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>APRA</strong></td>
<td>s.264 Proceeds of Crime Act</td>
</tr>
</tbody>
</table>
### LEGAL REPRESENTATION

<table>
<thead>
<tr>
<th>Does a party have a right to legal representation at interviews?</th>
<th>Yes:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>s.23 ASIC Act</td>
</tr>
<tr>
<td></td>
<td>s.279 SIS Act</td>
</tr>
<tr>
<td></td>
<td>s.109 RSA Act</td>
</tr>
</tbody>
</table>

| Yes: |
|  | s.279 SIS Act |
|  | s.109 RSA Act |
|  | ss.57, 62E, 83 Insurance Act |

### AUSTRAC

Section 242 of the AML/CTF Act explicitly provides that the AML/CTF Act does not affect the law relating to LPP. Therefore, parties under investigation by AUSTRAC may claim LPP if the elements of LPP are satisfied under the Evidence Act 1995 (Cth) and common law.

Parties under investigation by AUSTRAC cannot refuse to provide the following information on the basis of self-incrimination or penalty privilege, although they have “evidential immunity” in relation to “use” of the information:

- “AML/CTF reports” (ss.47, 48 AML/CTF Act);
- “Notices to reporting entities” (ss.202, 205 AML/CTF Act);
- information requested by an Authorised Officer (ss.167, 169 AML/CTF Act); and
- answers to questions asked by, and documents produced at the request of, an Authorised Officer (s.150 AML/CTF Act).

There is no right to legal representation when answering questions asked by an Authorised Officer of AUSTRAC.

### 8. CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

Yes, in certain circumstances.

ASIC is allowed to use information in its possession for any of its functions and powers. This includes the use of information to institute criminal, civil or administrative proceedings.

ASIC may release transcripts of compulsory examinations or related books under the ASIC Act. ASIC regularly provides transcripts of its compulsory examinations to class action law firms and liquidators. Under the ASIC Act, ASIC may release such transcripts to a lawyer if the lawyer satisfies ASIC that his/her client is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination relates. The lawyer must not use, publish or communicate the copies of the transcript except in connection with preparing, beginning or carrying on, or in the course of, such proceeding. Under the ASIC Act, ASIC may provide information obtained in the course of its investigations to other regulatory agencies, including overseas agencies.

There are also restrictions on the admissibility of evidence obtained in a compulsory examination or in production of documents required by ASIC and APRA (see also Question 7 above):

- In the case of a compulsory examination, if a person claims self-incrimination/penalty privilege, a court cannot admit the evidence in a criminal or penalty proceeding against that person even though the person could not refuse to answer a question in the compulsory examination on the basis of that privilege.
- In the case of production of documents required by ASIC, if a person claims self-incrimination/penalty privilege, a court cannot admit the evidence in a criminal or penalty proceeding against that person even though the person could not refuse to produce the documents on the basis of that privilege, if the production of documents is required under the RSA Act.
- In the case of production of documents required by APRA, if a person claims self-incrimination/penalty privilege, a court cannot admit the evidence in a criminal or penalty proceeding against that person even though the person could not refuse to produce the documents on the basis of that privilege, if the production of documents is required under the Banking Act, Insurance Act, Life Insurance Act or RSA Act.

The above “evidential immunities” are only available to natural persons. The “evidential immunities” do not prevent the evidence from being used against another person who is not the person giving information.

Documents seized under Crimes Act search warrants can only be used for purposes permitted under that Act. For instance, documents seized under Crimes Act search warrants can be made available to ASIC or APRA for them to, among other things, prevent, investigate and prosecute a criminal offence or to decide to institute criminal proceedings. However, to use the same documents as evidence or in relation to civil proceedings would be an abuse of power which could be restrained by injunction.
### 9. WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?

<table>
<thead>
<tr>
<th>BODIES</th>
<th>ACTIONS</th>
</tr>
</thead>
</table>
| ASIC   | • Commence prosecutions or refer matter to DPP  
|        | • Commence or intervene in civil proceedings  
|        | • Release information of serious contravention to the Minister, Australian Federal Police, CEO of the Australian Crime Commission, DPP or a prescribed agency  
|        | • Give advice to the Minister, including where the Minister is deciding whether to suspend, cancel or impose conditions on an Australian financial services licence (AFSL) holder that is regulated by both ASIC and APRA  
|        | • Apply to the court for the following remedies:  
|        |   • compensation order  
|        |   • declaration of contravention  
|        |   • disqualification (from managing a corporation) order  
|        |   • injunction  
|        |   • order to disclose information or publish advertisements  
|        |   • in relation to enforceable undertakings, order to comply with term of undertaking, pay amount attributable to a breach or any other order  
|        | • Conduct surveillance, inspections and informal liaison |
| APRA   | • Undertake a formal investigation  
|        | • Remove director, senior manager or auditor of an authorised deposit-taking institution  
|        | • Appoint statutory manager, judicial manager or replacement trustee to an institution  
|        | • Seek various orders from the court including:  
|        |   • order disqualifying individuals from holding particular positions within industries supervised by APRA (although any decision to disqualify an individual from holding a senior role must be made by the Federal Court of Australia on application of APRA)  
|        |   • civil penalty order  
|        |   • compensation order  
|        |   • recovery of profits  
|        | • Conduct surveillance, inspections and informal liaison |
| AUSTRAC| • Give report of breaches of obligations under the AML/CTF Act to an Australian government body if breaches are relevant to that body’s exercise of powers and performance of functions  
|        | • Seek various orders from the Federal Court including:  
|        |   • civil penalty order  
|        |   • injunction (note that some factors which are otherwise relevant to the Federal Court’s exercise of its power to grant injunctions need not be considered)  
|        | • interim injunction  
|        | • Conduct surveillance, inspections and informal liaison |
10. WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?

<table>
<thead>
<tr>
<th>BODIES</th>
<th>SANCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASIC</td>
<td>Pecuniary penalty order following a declaration of contravention by a court</td>
</tr>
<tr>
<td></td>
<td>Infringement notice in relation to contravention of continuous disclosure requirements, contravention of market integrity rules, contravention of derivative trade reporting rules, and contravention of derivative trade repository rules</td>
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<td>Suspend, cancel and/or impose conditions on AFSL</td>
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<td></td>
<td>Banning order (a temporary or permanent order prohibiting a person from providing any or certain financial services in specified circumstances or capacities)</td>
</tr>
<tr>
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<td>Disqualification order (an order disqualifying a person from providing financial services for a specified period)</td>
</tr>
<tr>
<td></td>
<td>Enter into “enforceable undertakings”, a breach of which allows ASIC to apply to court for orders ensuring compliance (enforceable undertakings are given to ASIC and, if ASIC accepts them, they are generally considered to be an alternative to civil or administrative action by ASIC)</td>
</tr>
<tr>
<td></td>
<td>Directions to suspend dealings in financial products</td>
</tr>
<tr>
<td>APRA</td>
<td>Impose conditions on an institution’s licence to carry out its activity (eg, Registrable Superannuation Entity licence, licence/authorisation to carry on an insurance business, and licence/authorisation to be an authorised deposit-taking institution)</td>
</tr>
<tr>
<td></td>
<td>Issue directions related to particular matters (eg, a direction to increase an authorised deposit-taking institution’s level of capital or generally a direction to comply with prudential standard, to order an audit, to remove a director, not to borrow any amount etc)</td>
</tr>
<tr>
<td></td>
<td>Enter into enforceable undertakings, a breach of which allows APRA to apply to court for orders</td>
</tr>
<tr>
<td>AUSTRAC</td>
<td>Remedial direction requiring a specified action to be taken to ensure that a reporting entity does not contravene a civil penalty provision, or is unlikely to contravene the civil penalty provision in the future</td>
</tr>
<tr>
<td></td>
<td>Enter into enforceable undertakings, a breach of which allows AUSTRAC to apply to court for orders</td>
</tr>
</tbody>
</table>

11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?

Yes.

A person may offer, and ASIC, APRA and AUSTRAC may accept, an enforceable undertaking to address matters of concern to those regulators. An enforceable undertaking may include a wider range of outcomes than would emerge from a court proceeding.

Parties may also settle court proceedings brought by the regulatory bodies, for instance by negotiating agreed penalties or compensation amounts, subject to court approval. Unlike some overseas jurisdictions, Australian regulators cannot settle court proceedings on a “neither admit nor deny” basis.

12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?

Yes. A person may appeal to a court against an enforcement action on the basis of an error of law. In certain circumstances, a person may also appeal to an administrative tribunal with regard to the merits of a particular enforcement decision (particularly in relation to administrative decisions such as cancelling, varying or suspending licences or registrations, or banning orders).

Under the Banking Act, APRA may also reconsider its own “reviewable decision” if a party affected and dissatisfied by the decision requests that APRA reconsiders the decision.

13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (EG, INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENTION?

Both. There are both criminal sanctions and civil remedies (injunctions and compensation orders) available for securities and futures market misconduct. Civil penalties (a hybrid between criminal and civil sanction) may also be available. ASIC’s current public policy is to first consider the criminal route for insider dealing.

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?

Investors may seek injunctions if they have suffered loss or damage as a result of misconduct. If an injunction is granted, the court may order payment of compensation either in addition to or in substitution of the injunction.

Investors may also seek civil penalty compensation orders from the court.

15. DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?

Yes. There are many examples in recent times of the police cooperating with financial services and markets regulators in Australia for the purpose of investigating misconduct. In addition, multi-agency taskforces may comprise taxation, office employees and staff of the Australian Crime Commission (a government agency which investigates organised crime). A significant instance of an insider dealing prosecution in Australia emerged from Project Wickenby, a cross-agency investigation involving the...
Australian Taxation Office, Australian Federal Police, Australian Crime Commission, ASIC and the Commonwealth DPP, with support from AUSTRAC, the Australian Government Solicitor and the Attorney-General’s Department.

16. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?

Each of ASIC, APRA and AUSTRAC has signed memoranda of understanding to provide and receive information from overseas regulators. In addition, the Mutual Assistance in Business Regulation Act 1992 (Cth) and the Mutual Assistance in Criminal Matters Act 1987 (Cth) also provide Australian regulatory agencies with the ability to assist overseas regulators in the investigation or prosecution of relevant conduct. ASIC, APRA and AUSTRAC are permitted to share confidential information from its investigations with overseas regulators. ASIC is also a signatory to the International Organisation of Securities Commission’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, and has thereby agreed to its mutual assistance and exchange of information principles (such as taking statements).

17. WHICH REGULATORY BODIES ARE EMPOWERED TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

AUSTRAC is the primary regulator to combat terrorist financing and money laundering within the financial services industry. Corruption, to the extent that it would result in a breach of directors’ duties, would likely be addressed by ASIC. To the extent that the body being investigated is also regulated by APRA, then APRA may also investigate the conduct of the persons who have been accused of corruption, terrorist financing or money laundering.

The Australian Federal Police and State police may also be involved in such an investigation, along with the Australian Crime Commission, depending on its seriousness.

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORIZATION APPLICATION PROCESS?

ASIC

In granting an AFSL, ASIC must be satisfied that the applicant (if a natural person), or each of the applicant’s “responsible officers” (if not a natural person), is of good fame and character. In determining good fame and character, the following are relevant matters:

- any conviction for serious fraud within 10 years prior to the application;
- whether the person held an AFSL which was suspended or cancelled;
- whether a “banning order” or “disqualification order” (see Question 10 above) has been made against the applicant; and
- any other matter ASIC considers relevant.

A “responsible officer” is an officer of a body corporate who would perform duties in connection with the holding of an AFSL.

In practice, ASIC requires AFSL applicants to submit the following documents for each person (referred to by ASIC as a “responsible manager”) nominated as being responsible for significant day-to-day decisions about the financial services provided:

- bankruptcy checks;
- criminal checks;
- Statement of Personal Information (in which responsible managers must make various declarations, including whether they have been found to have committed fraud or acts constituting misrepresentation or dishonesty in any proceedings, and whether they have been subject to disciplinary actions by a professional body); and
- business references attesting to the responsible manager’s good fame and character, and that the referee is not aware of the person’s involvement in any misconduct.

These documents may disclose relevant misconduct or non-compliance.

While there is no express requirement to disclose past misconduct when an entity applies for an Australian market licence or a clearing and settlement facility licence, ASIC may request additional materials as it considers necessary, which may disclose relevant misconduct or non-compliance.

APRA

An entity applying to be an authorised deposit-taking institution, general insurer, trustee for a superannuation entity or life insurance provider must provide information on proposed board members, senior management, auditors, actuaries and other responsible persons as required, including statements regarding their fitness and propriety.

In addition, an entity applying to be a superannuation entity must provide police checks of each responsible officer of the entity.

19. IS A FINANCIAL INSTITUTION IN AUSTRALIA UNDER ANY OBLIGATION TO REPORT TO THE AUSTRALIAN REGULATOR(S) ANY MISCONDUCT/NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

See response to Question 20 below.

20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

No, there are no specific laws or regulations imposing obligations on persons to whistle-blow or disclose suspected financial services-related wrongdoing within the organisation. However, under some State criminal statutes, for instance the Crimes Act 1900 (NSW) and the Crimes Act 1958 (Vic), a person who knows or believes that a “serious indictable offence” (i.e., an indictable offence that is punishable by life imprisonment or imprisonment for a term of 5 years or more) has been committed commits an offence if he/she fails to inform a member of the police force or other appropriate authority and there is no reasonable excuse for that failure.

There are also provisions under the Corporations Act which have been enacted to facilitate the protection of persons who decide to whistle-blow.
In addition, various breach reporting obligations arise in a number of legislation, delegated legislation and operating rules of financial markets. Under the Corporations Act, a person who holds an AFSL must report significant breaches of its obligations as a licensee to ASIC. Similar obligations arise in relation to AUSTRAC and APRA-regulated bodies. Under the market integrity rules which apply to participants of the financial market operated by the Australian Securities Exchange (ASX) and the Chi-X Australia financial market, those participants must report to ASIC instances where they suspect insider trading or market manipulation has occurred. Self-reporting obligations also arise under the operating rules of financial markets, such as the operating rules for participants of the ASX, who are required to immediately report to ASX significant breaches of the rules of that financial market.

21. HOW ARE HEDGE FUNDS REGULATED?

This will depend on a number of factors. A hedge fund which is available for investment by retail clients in Australia will need to be registered as a managed investment scheme with ASIC. The “responsible entity” of a managed investment scheme will need to hold an AFSL, and must be a limited company incorporated in Australia. A hedge fund offered to retail clients in Australia will also need to be offered using a Product Disclosure Statement.

ASIC has released a policy about disclosure in relation to offers of hedge fund investments. This policy is contained in Regulatory Guide 240 Hedge funds: Improving disclosure (RG 240). RG 240 applies to a registered managed investment scheme that is promoted by the responsible entity using the expression and as being a “hedge fund”; or exhibits two or more of the following characteristics:

- complex investment strategy or structure;
- use of leverage;
- use of derivatives;
- use of short selling; or
- charges of performance fee.

The requirements on a hedge fund which is only available for investment by wholesale clients are less onerous. The person offering investment in the hedge fund will likely need to hold an AFSL. To the extent that the hedge fund carries on business in Australia and is a foreign company, that hedge fund will also need to be registered as a foreign company under the Corporations Act.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

In the medium term, there are likely to be very significant reforms to the regulation of financial services in Australia. These reforms will arise from a recent inquiry by the Australian Senate into the regulatory performance of ASIC and a wider review of the regulatory structure of the Australian financial system.

Report by the Australian Senate

The majority report of the Australian Senate has recommended significant changes to the way in which ASIC regulates and the penalties available to ASIC. It has recommended that ASIC become a more pro-active and robust regulator with a better understanding of Australia’s corporate environment. The penalties available to ASIC are recommended to be reviewed to ensure they are set at appropriate levels, and the government should consider amending the law to allow for “multiple of gain penalties or penalties combined with disgorgement”. The majority report also recommended changes in the way that ASIC is funded – towards a more “user pays” model of regulation, where the fees charged by ASIC reflect the resources required by ASIC to undertake its regulatory functions.

“Crisis management” powers for prudentially-regulated bodies

The Commonwealth Treasury has released proposals to enhance the “crisis management” powers of APRA in respect of APRA-regulated bodies.

The financial system inquiry

The Australian government has also commenced a wider review of the regulatory structure of the Australian financial system. The terms of this inquiry include to review the consequences of developments in the Australian financial system since the last such inquiry in 1997 and the global financial crisis, to “refresh the philosophy, principles and objectives underpinning the development of a well-functioning financial system”, and to “identify and consider the emerging opportunities and challenges that are likely to drive further change in the global and domestic financial system”.

An interim report was released on 15 July 2014. It noted that “the Australian financial system has performed reasonably well in meeting the financial needs of Australians and facilitating productivity and economic growth.” However, the interim report noted that the risk of future financial crises, fiscal pressures, productivity growth, technology, and international integration pose significant opportunities and challenges that should be addressed. The final report of the review is due in November 2014.
1. WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN THE PRC?

The main bodies are:
- China Securities Regulatory Commission (CSRC);
- China Banking Regulatory Commission (CBRC);
- China Insurance Regulatory Commission (CIRC); and
- People’s Bank of China (PBOC).

2. WHAT DOES EACH OF THESE BODIES REGULATE?

The CSRC has ultimate responsibility for regulating the stock markets in Shanghai and Shenzhen, the futures exchange in Shanghai and the commodities exchanges in Zhengzhou and Dalian, with the local exchanges retaining certain frontline regulatory functions under CSRC supervision. The CSRC:
- sets regulations governing the markets;
- regulates listed companies, securities and futures brokers;
- oversees stock and bond issues;
- supervises the establishment and operation of investment funds;
- has jurisdiction over the auditors of publicly listed companies and law firms which provide advice in relation to the issue, listing or trading of securities;
- appoints the head of each exchange; and
- approves the directors and senior officers of securities companies.

Since 2003, banking regulation has primarily been carried out by the CBRC. It has broad supervisory and disciplinary functions in relation to banking activities in the PRC. Amongst other things, it licenses banking institutions, sets their authorised business scope and formulates and enforces regulations governing their operation.

The CIRC regulates the mainland Chinese insurance market. In addition to setting regulations, it oversees the establishment and operation of insurance companies and their subsidiaries and monitors the standard of insurance agents and insurance companies’ senior management.

The PBOC is the central bank of the PRC. Its functions include controlling monetary policy and regulating financial institutions in its capacity as the central bank. In addition to its role in relation to monetary policy, the PBOC retains responsibility for the inter-bank lending, bonds and foreign exchange markets, and is the lead agency for anti-money laundering activities.

3. WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN THE PRC?

Securities: principally, the Securities Law, the Company Law and supplemental regulations issued by the CSRC.

Banking: principally, the Commercial Bank Law, the Law of the People’s Bank of China, the Banking Supervision Law, the Regulations on the Administration on Foreign-funded Banks and supplemental regulations issued by the CBRC and the PBOC.

Insurance: principally, the Insurance Law and supplemental regulations issued by the CIRC.

Jurisdictional overlaps and ambiguities are often resolved by the issuance of joint regulations by two or more authorities.

4. DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?

No, they have different powers of enforcement described further below.

5. WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?

Securities

The CSRC may:
- conduct on-site routine checks into securities companies and organisations and listed companies;
- conduct investigations and collect evidence at sites where it suspects that illegal activities have occurred;
- interview individuals or entities under investigation, or other individuals or entities related to the matters under investigation, and require them to explain those matters;
- review and copy documents related to events under investigation and seal/copy any such documents which might be moved, concealed or destroyed; and
- inspect financial information related to the parties under investigation or third parties related to the investigation and relevant to the matters under investigation.
Any person who refuses to cooperate or obstructs the CSRC in its performance of the functions and duties of supervision, examination and investigation, by means of violence or threat, shall be subject to administrative sanctions by the Public Security Bureau (PSB - in effect, the PRC police).

**Banking**

The CBRC may:

- demand information relating to a banking institution’s operations and risk management control, and copies of its accounting and financial statements, including its asset-liability and profit statements;
- conduct on-site routine checks into banking institutions;
- interview the employees or senior managers of an institution under investigation and require them to explain the matters under investigation;
- examine the institution’s operation data management computer system; and
- copy relevant documents and files in the possession of the banking institution and seal/copy any such documents and materials which might be moved, concealed or destroyed.

Once it suspects conduct capable of constituting a financial crime, the CBRC’s investigative powers are increased. It may then exercise the powers listed above (other than conducting an on-site investigation and examining the computer system) in relation to individuals and entities other than banking institutions suspected of being involved in the illegal acts. It may also then inspect the bank accounts of a banking institution or other individual or entity suspected of conducting illegal financial operations.

Non-compliance with the CBRC’s investigatory requirements may result in a fine or, in serious circumstances, suspension of business operation or revocation of business licence.

The PBOC has the power to investigate the activities of financial institutions and other entities and individuals regarding issues relating to currency management, foreign exchange management, gold management, the state exchequer and money laundering.

Under the Anti-Money Laundering Law enacted in December 2006, the PBOC has the power to carry out on-the-spot investigations and to interview key personnel in financial institutions in relation to suspicious transactions. The investigators may also seal/copy any documents to prevent them from being disposed of, concealed, tampered with or destroyed.

Further, under the Provisional Regulations on Anti-Money Laundering Information Research System, which were jointly issued by the PBOC, the Supreme People’s Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Supervision in December 2009, anti-money laundering related information collected by the PBOC during its investigations can be shared with the Supreme People’s Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Supervision upon their formal written request, for the purpose of assisting their investigation of money laundering activities.

Non-compliance with the PBOC’s investigatory requirements may result in a fine or, in serious circumstances, suspension of business operation or revocation of business licence.

**Insurance**

The CIRC may:

- conduct on-site inspections of insurance companies, insurance agents, insurance brokers, insurance asset management companies and representative offices of foreign insurance institutions;
- conduct investigations and collect evidence at sites where it suspects that illegal activities have occurred;
- interview individuals or entities under investigation, or other individuals or entities related to the matters under investigation, and require them to explain those matters;
- review and copy documents related to events under investigation and seal/copy any such documents which might be moved, concealed or destroyed; and
- inspect financial information and bank accounts related to the parties under investigation or third parties related to the investigation and relevant to the matters under investigation.

Non-compliance with the CIRC’s investigatory requirements may result in a fine or, in serious circumstances, suspension of business operation or revocation of business licence.

6. ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?

Employees of the regulatory bodies are required to keep state and commercial secrets obtained during investigations confidential (see the Securities Law, the Banking Supervision Law, the Insurance Law, and the Law of the People’s Bank of China).

The CSRC is required to keep any personal data, or state and commercial secrets obtained during investigations confidential. The other regulatory bodies will usually keep such information confidential unless disciplinary measures are taken or where potential criminal activity is suspected and reported to the relevant authority.

7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCrimINATION AND LEGAL PROFESSIONAL PRIVILEGE?

Individuals and entities are required to co-operate in any investigation carried out by these regulatory bodies by providing any documents and information requested and not concealing facts or evidence (see the Securities Law, the Banking Supervision Law and the Insurance Law). There is no exemption from the duty to co-operate and provide information on the grounds of potential self-incrimination or legal professional privilege. In fact, the concept of legal professional privilege does not exist in the PRC.

Parties do not have an explicit right to legal representation during regulatory investigations. In practice, legal representation may be permitted but is sometimes regarded as an indication of an unwillingness to co-operate with the investigations.
8. CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

Yes. The regulatory bodies may pass evidence of irregular market conduct and other suspected criminal acts to the relevant authority, be it the PSB, procuratorate or court. Indeed, each of the regulatory bodies is required to transfer cases of suspected criminal activity to the relevant authority. Specifically, the Provisional Regulations on Anti-Money Laundering Information Research System provide for a complex mechanism for the different authorities to share information on a suspected target for the purpose of investigating money laundering activities.

9. WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?

In addition to the matters mentioned in Questions 5 and 8 above and Question 10 below:

Securities

Asset freezing

The CSRC may freeze or secure funds or accounts which are related to the events under investigation, or which belong to the subjects of an investigation, if it has evidence which suggests that those funds may otherwise be removed or dissipated.

Operational restrictions

The CSRC may, when investigating any major securities irregularity (including manipulation of the securities market or insider dealing), temporarily bar the subjects of an investigation from dealing in securities and futures pending conclusion of the investigation, for a maximum period of 15 trading days (subject to an extension of 15 days in complicated cases).

If a securities company breaches the net assets requirement or other applicable risk management standards, the CSRC may require it to rectify the breach within a certain time period. If the institution does not do so, or in any event if the breach has a serious impact on the interests of investors or the securities market, the CSRC may (until the problem has been rectified):

- restrict the company’s business operations (by, for example, ordering it to suspend some business operations);
- restrict the company’s ability to declare dividends or pay remuneration to its directors, supervisors and senior managers;
- restrict the company’s ability to transfer property;
- order the company to replace its directors, supervisors or senior managers;
- order the company’s controlling shareholder to transfer its shares or restrict that shareholder’s ability to exercise its shareholder’s rights; or
- revoke the company’s business licence.

Takeover, suspension or compulsory liquidation

If a securities company commits an illegal act or breaches the applicable risk management standards and that act or breach seriously disturbs the order of the securities market or seriously injures the interests of investors, the CSRC may suspend the company’s business, take over the company until the problem is rectified, or put it into compulsory liquidation.

In such circumstances, the CSRC may also impose restrictive measures on the securities company’s directors, senior management or other personnel who are directly responsible for the breach, such as requesting the immigration authorities to prevent them from leaving the country or asking the relevant authority to restrict their ability to transfer property.

Banking

Asset freezing

Whilst the CBRC has no power to freeze assets, it may request the relevant authority (most likely the PSB or the procuratorate) to investigate or freeze bank accounts or funds relevant to an investigation or belonging to the subjects of an investigation, if it has evidence which suggests that those funds may otherwise be dissipated or removed.

In cases of suspected money laundering, the PBOC may order a financial institution to freeze an account for up to 48 hours, after which the account must be released unless the relevant “investigation organisation” (which, depending on the nature of the underlying crime, could be the PSB, procuratorate or national security bureau) confirms the freezing injunction.

Operational restrictions

If a banking institution is not being operated in a prudent way (as defined in the CBRC’s regulations and in relation to issues such as risk management and capital adequacy), the CBRC may order it to rectify the problem within a certain time period. If the institution fails to do so, or in any event if the institution’s failure has a serious impact on the operation of the bank or the interests of the bank’s creditors, the CBRC may (until the problem has been rectified):

- order it to cease operating parts of its business;
- restrict its ability to distribute profits or other revenues;
- limit the transfer of its assets;
- require it to replace its directors or senior management;
- prohibit it from establishing any new branches; or
- order the company’s controlling shareholder to transfer its shares or restrict that shareholder’s ability to exercise its rights.

Takeover, merger or compulsory liquidation

If a banking institution is facing a serious credit crisis (for example, where there is evidence suggesting that the institution is unable, or is likely to become unable, to pay its debts or will temporarily cease repaying its debts), the CBRC may take over the bank until the crisis has been resolved (subject to a maximum period of 2 years) and encourage it to accept a takeover or merger bid by another company.

If a banking institution conducts illegal operations or its management is severely defective such that it will seriously prejudice the financial order and interests of the general public unless it is liquidated, the CBRC may place it in compulsory liquidation.

In any of these situations, the CBRC may also impose restrictive measures on the directors and senior management of the bank. By way of example, the CBRC may:

(a) request the immigration authorities to prevent them from leaving the country if it suspects that they are likely to flee the jurisdiction and permitting them to leave would cause serious harm to the interests of the state; or
(b) ask the relevant authority to restrict their ability to transfer property.
Similarly, if a banking institution is facing difficulties in making payments, which are likely to result in a financial crisis in terms of maintaining the stability of the financial market (implying a higher threshold than the existence of a “serious credit crisis” which would trigger the CBRC’s power referred to above), the PBOC may examine and supervise the banking institution, subject to the approval of the State Council.

Insurance

Asset freezing

The CIRC may apply to the court for orders to freeze or secure funds or accounts which are related to the events under investigation or which belong to the subjects of an investigation, if it has evidence which suggests that those funds may otherwise be removed or dissipated.

Operational restrictions, suspension and compulsory takeover

The CIRC may order an insurance company to:

- increase its capital or reinsurance;
- restrict its business scope;
- restrict the payment of dividends to shareholders;
- restrict the purchase of fixed assets or the level of its operating costs;
- restrict the types of investment and/or proportion of use of funds;
- restrict the establishment of additional branch offices;
- order an auction of non-performing assets or transfer of parts of the insurance business;
- restrict the level of salaries of directors, supervisors and senior managers;
- restrict commercial advertisements; or
- cease accepting new business.

If the company fails to comply with such an order, the CIRC may (until the company rectifies the problem) send personnel to overhaul and supervise the company and may prevent the company from underwriting new policies, suspend part of the company’s operations or adjust its use of funds.

If an insurance institution’s breach of the applicable regulations has jeopardised the public interest and prejudiced that institution’s ability to cover its liabilities, the CIRC may take over the institution for no more than 2 years, and may apply for a court order to declare the company insolvent if the company is unable to cover its debts.

10. WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?

Whilst the precise sanctions available depend on the circumstances, all of these regulatory bodies may, in relation to institutions, issue warning orders and public or private reprimands, require wrongdoers to rectify mistakes within a certain time period, impose fines and confiscate income derived from illegal activities. They may also warn and fine individuals involved in the illegal acts. In addition, in certain circumstances, the actions below may be taken.

Securities

The CSRC may withdraw an institution’s securities business licence and revoke the securities qualification or practising licence of the individuals responsible for, or directly involved in, the wrongful conduct. Individuals who have their securities qualification revoked are barred from acting as directors, supervisors or senior managers of securities companies for 5 years. The CSRC is also required to publicise any disciplinary punishments it imposes, although it also issues “internal” reprimands (which arguably fall short of punishments), which are typically announced without identifying the institution involved.

If a law or accounting firm providing advice in relation to the issue, listing or trading of securities breaches an applicable regulation, the CSRC may fine it, issue it with a warning or rectification order or bar it from providing securities related advice. The CSRC may also fine, warn or disqualify from dealing in securities the individuals responsible for or directly involved in the breach.

The CSRC may order a listed company to rectify any breach of applicable regulations and may fine or warn the company. It may also impose similar punishments on the individuals responsible for or directly involved in the breach and on the listed company’s controlling shareholder, if that shareholder instigated the breach. Whilst the Securities Law only provides for such sanctions to be imposed in relatively limited circumstances, the CSRC is reported to be in the process of drafting new regulations which may broaden the potential liability of listed companies and their directors.

It has been reported that the CSRC is going to promulgate the Rules on the Supervision and Management of Listed Companies. The draft rules were published for public consultation in late 2007, and in June 2014 it was reported that the CSRC held an expert meeting with the Legislative Affairs Office of the State Council. The CSRC is reportedly finalising the rules and they will come into force in the near future. The rules regulate the conduct of directors, supervisors, senior management, controlling shareholders and other people with actual control of PRC-listed companies. It was reported that after the publication of these rules, the CSRC will also introduce internal control guidance for listed companies, rules for the independent directors of listed companies, a practice handbook for directors, supervisors and senior management of listed companies, as well as a practice handbook for controlling shareholders and persons with actual control of listed companies. All of these measures aim to further regulate the operation of listed companies and improve listed companies’ internal control systems.

Banking

Similarly, the CBRC may suspend or withdraw the licence of a banking institution and bar (for life, if appropriate) directors, managers and other personnel who were directly responsible for a breach of any applicable regulations from working in the sector.

Insurance

The CIRC may prohibit an insurance institution from undertaking new insurance business, impose a restriction on the scope of its business and withdraw an insurance institution’s licence. The CIRC may also revoke the practising licence of those personnel who were directly responsible for a breach of any applicable laws and regulations or, in serious cases, prohibit such personnel from working in the sector.
11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?

No. It remains to be seen whether or not the State Council will in due course allow these regulatory bodies to enter into settlements for the purpose of carrying out its 10-year plan to “enhance administrative efficiency, decrease administrative costs, and encourage innovative regulatory methods.”

12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?

If an institution or individual is not satisfied with the decision of any of these regulatory bodies, it may either:
- make an application to the relevant regulatory body for an administrative review of the decision (the ruling resulting from that administrative review may be either appealed to the State Council, which will make the final ruling on the matter, or submitted to a first instance court for judicial review and, in turn, be appealed to a higher court for a final ruling); or
- submit the regulatory body’s decision directly to the courts for judicial review (that court’s decision may then be appealed to a higher court for a final ruling).

13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (E.G., INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENITION?

It depends on the circumstances.

Insider dealing is a criminal offence if:
- the value involved exceeds RMB500,000 (securities) or RMB300,000 (futures contracts);
- the profit gained or loss avoided exceeds RMB150,000;
- the margin deposit for the futures trading exceeds RMB300,000;
- there are repeated acts of insider dealing or disclosure of inside information; or
- other serious circumstances exist.

Making false statements is a criminal offence if the false statement:
- causes shareholders, creditors or third parties to suffer direct economic losses in excess of RMB50,000;
- increases or decreases the company’s asset or profit figures by 30% or more from the latest disclosed accounting statements;
- results in multiple suspensions of trades or delisting of the underlying security;
- enables a company to obtain approvals for a public offering or to be listed, which it would not otherwise be able to;
- discloses profit as loss or loss as profit in the accounting statements;
- relates to accounting statements and material information which must be disclosed; or
- significantly impacts the market.

Market manipulation is a criminal offence if:
- it is caused by a listed company’s directors, supervisors, senior management, actual controllers, controlling shareholders or any other persons connected to the company taking advantage of inside information to manipulate the price or trading volume of the underlying securities; or
- trading volume in the underlying securities or futures contracts exceeds a certain percentage over a prescribed period (ranging from 20% to 50% of the overall trading volume, depending on the circumstances: see the Supplemental Provisions issued by the Supreme People’s Procuratorate and Ministry of Security on Standard for Prosecution for Economic Crimes).

In practice, the regulatory bodies have significant prosecutorial discretion in determining whether to treat conduct as criminal.

An individual or institution may be subject to both criminal and civil proceedings in relation to the same misconduct, according to the general principles under the PRC Civil Procedure Law.

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?

The Securities Law allows investors to take civil action against those who commit acts of market misconduct (including insider dealing, market manipulation, making false statements, fraud and cheating) for damage suffered as a result of the acts.

15. DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?

If criminal behaviour is suspected, the PSB (usually acting through a regional financial crime investigation division) will be involved in the investigation and the case may be transferred by the regulatory body to the relevant authority.

16. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?

The CSRC is a member of the International Organization of Securities Commissions (IOSCO). The PRC also signed the IOSCO’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information in April 2007, under which signatories agree to assist one another in enforcement investigations and prosecutions by collecting and sharing enforcement-related information, eg, bank and brokerage account information and witness testimony. As of July 2014, the CSRC is party to bilateral memoranda of understanding (MOUs) with the regulatory authorities of 55 countries/regions (including Hong Kong and Taiwan). Similarly, as of April 2014, the CBRC and the CIRC are party to bilateral MOUs or bilateral regulatory co-operation agreements with 55 and 7 countries/regions respectively (including Hong Kong and Taiwan).

However, most of the MOUs between the CSRC (for example) and other securities regulators focus on the technical support provided by the non-PRC regulator (which typically operates in a more developed securities market) to the CSRC. Actual co-operation between the CSRC and other regulators as a matter of practice remains limited, although there are ongoing efforts to improve this position as between, for example, the PRC and Hong Kong. In April 2007, the Securities and Futures Commission in Hong Kong and the CSRC exchanged side letters to their MOU which were designed to improve and facilitate cross-border investigations of securities crimes or regulatory breaches, but without imposing obligations of co-operation on either side.
The State Council has authorised the PBOC to co-operate with foreign states and international organisations in combating money laundering on behalf of the PRC government.

In 2007, the PRC became a member of the Financial Action Task Force (FATF), which is an inter-governmental organisation aimed at developing national and international policies to combat money laundering and terrorist financing. According to the PRC government, as a member of the FATF, it participates in international co-operation in relation to information sharing, training, investigation assistance, asset tracing and extradition. However, there is little public record of actual examples of co-operation between the PRC and other FATF member states, especially in terms of investigation assistance, asset tracing and extradition.

17. WHICH REGULATORY BODIES ARE EMPOWERED TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

The PBOC is the lead agency in relation to anti-money laundering. The CSRC, CBRC and CIRC are required to report any suspected money laundering within their respective sectors to the PBOC.

The CIRC issued a notice on 10 August 2010 which aimed to strengthen anti-money laundering examinations in the insurance industry. According to the notice, investments in any insurance operators and the change of shareholding in any insurance operators must go through a detailed anti-money laundering examination. The anti-money laundering examination is also required when setting up branches of and reorganising existing insurance companies.

Subsequently, the CIRC issued the Measures for Anti-Money Laundering Operations of the Insurance Industry which came into effect on 1 October 2011. According to these measures, the CIRC is empowered to investigate and combat any money laundering activities within the insurance industry, including issuing specific guidelines on anti-money laundering practices, undertaking any investigations and reviews as well as organising anti-money laundering training for the insurance industry.

The CSRC also issued a decree dated 1 September 2010, introducing some further anti-money laundering mechanisms within the securities and futures industry. The decree requires each securities and futures operation organisation to report to the local CSRC branch its internal anti-money laundering system, as well as to submit an annual report on its work on anti-money laundering issues.

Terrorist financing unrelated to money laundering falls within the responsibility of the National Security Bureau (NSB). In January 2014, the NSB, together with the PBOC and the PSB, issued the Administrative Measures for Freezing Assets Involved in Terrorist Activities. The measures provide for close collaboration between the relevant authorities in combating terrorist financing. The measures require, among other things, the relevant banks and financial institutions to take immediate action to freeze any accounts and assets that are identified by the NSB or the PSB as connected to any terrorist group or terrorist activities.

The people’s procuratorates are responsible for the prosecution of all crimes, and also for the investigation of corruption committed by civil servants. Other financial crimes are investigated by the PSB’s specialised Economic Crime Bureau.

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/ NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORISATION APPLICATION PROCESS?

The Securities Law requires that a company applying to be listed in the stock market or to issue public shares must declare that it has no record of major misconduct in the past 3 years. Similarly, the Securities Law requires that for the establishment of a securities company, the applicant must prove that the major shareholders do not have any records of misconduct in the past 3 years. The CSRC also requires any fund management company that wishes to establish branches in the PRC to prove that it has not committed any misconduct in the past 12 months. Similar requirements apply to futures companies – the application for establishment and licences must be accompanied by proof that none of the shareholders with more than a 5% shareholding has been punished for market misconduct in the past 3 years.

For the establishment of branches by an insurance company, the application must be accompanied by a declaration that the applicant company has no record of material punishment by the financial regulatory authorities in the past 2 years.

19. IS A FINANCIAL INSTITUTION IN THE PRC UNDER ANY OBLIGATION TO REPORT TO THE PRC REGULATOR(S) ANY MISCONDUCT/NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

The Securities Law requires a listed company to submit a preliminary report to the CSRC and the relevant stock exchange as soon as possible if the company or any of its directors, supervisors or members of the senior management is under investigation by the judiciary for suspected misconduct that amounts to a criminal offence. The preliminary report must explain the cause of such investigation, the current status and any potential legal consequence, and the report must be submitted prior to the investigation being known by the general public.

Similarly, the CSRC requires futures trading companies and securities investment and fund management companies to report to the local branches of the CSRC, on an immediate basis, if such companies or any of their directors, supervisors or members of the senior management is under investigation by the relevant authorities for any suspected misconduct or violation of the relevant law and regulations.
The CBRC also requires commercial banks to report any material misconduct to the CBRC as soon as such misconduct is discovered.

**20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?**

The *Securities Law* requires employees of securities exchanges, securities firms and securities services institutions to tip off the relevant securities supervision and management organisations (which are the CSRC and its local branches) of any irregular transactions. In addition, individuals also have the right (but not an obligation) to tip off the relevant regulatory bodies of any suspected irregular behaviour.

**21. HOW ARE HEDGE FUNDS REGULATED?**

The kinds of activities typically carried out by hedge funds are not yet permitted to be carried out from the PRC. However, the CBRC has established a project research team on hedge funds. More recently, it was reported that 6 foreign hedge funds have been included in a pilot project named the Qualified Domestic Limited Partner Programme (*QDLP*), which was launched by the Shanghai municipal government in September 2013. The QDLP permits qualifying foreign hedge funds to establish subsidiaries in China to raise renminbi-denominated investment in their vehicles through private placements. The money raised must be invested in foreign markets. There may be further developments in this regard.

**22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?**

There has been some debate on the merger of the CSRC, CBRC and CIRC into one financial supervision authority. Some researchers affiliated with the Central Financial Working Committee of the Chinese Communist Party Central Committee have proposed the establishment of a consolidated China Financial Supervision Commission under the direct leadership of the State Council. It remains to be seen whether and when this recommendation will be implemented.
1. **WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN HONG KONG?**

The main bodies are:
- Securities and Futures Commission (SFC);
- Hong Kong Monetary Authority (HKMA);
- The Stock Exchange of Hong Kong Limited (Stock Exchange);
- Hong Kong Futures Exchange Limited (Futures Exchange); and
- Office of the Commissioner of Insurance (OCI).

2. **WHAT DOES EACH OF THESE BODIES REGULATE?**

**SFC**

The SFC is responsible for the issue of licences/registrations to corporations and individuals seeking to engage in regulated activities (SFC regulated activities), namely, dealing in securities and futures contracts, leveraged foreign exchange trading, advising on securities, futures contracts and corporate finance, providing automated trading services, securities margin financing, asset management and since June 2011, the provision of credit rating services. Reform is currently underway to establish a regulatory regime for the over-the-counter (OTC) derivatives market, involving the addition of 2 new SFC regulated activities – see Question 22 below for further details.

The SFC also sets standards for the authorisation and regulation of investment products, and reviews and authorises offering documents of investment products to be marketed to the public.

The SFC’s regulatory ambit extends beyond persons licensed by or registered with it – it is also empowered to, for example, investigate and take enforcement action against any person who commits market misconduct as defined under the Securities and Futures Ordinance (SFO).

The SFC also oversees Hong Kong Exchanges and Clearing Limited (HKEx), which is a holding company of the Stock Exchange, the Futures Exchange and their related clearing houses. HKEx is itself listed on the Stock Exchange.

The SFC retains regulatory supervision over listing applicants and listed corporations in a number of ways, including vetting listing application materials and monitoring announcements under the dual filing regime, investigating listed corporations and their directors for suspected prejudicial or fraudulent conduct or for providing false or misleading information to the public, regulating takeovers and privatisations, and considering requests for exemptions from prospectus requirements. It may also direct suspension of trading in specific stocks under certain circumstances. Since January 2013, it has had primary responsibility for regulating listed corporations’ disclosure of inside information.

**HKMA**

The HKMA regulates the banking industry and is the front-line regulator of licensed banks, restricted licence banks, deposit-taking companies (collectively, authorised institutions), as well as money brokers. It also performs the general obligations of a central bank.

This chapter will focus on the regulation of authorised institutions. Money brokers in Hong Kong are few in number and they are subject to less regulation than authorised institutions.

**Stock Exchange and Futures Exchange**

The Stock Exchange is the front-line regulator of entities listed on its Main Board and Growth Enterprise Market (GEM), and of the trading operations of stock exchange participants and stock options exchange participants (collectively, SE participants). The Futures Exchange is primarily responsible for regulating the trading operations of futures exchange participants (FE participants).

SE participants and FE participants are brokerage businesses which are admitted as participants of the Stock Exchange and the Futures Exchange respectively, for the purpose of trading via the facilities of the relevant exchange. They are, however, primarily regulated by the SFC and are required to be licensed by the SFC to deal in securities and futures contracts. The SFC is responsible for their prudential and conduct regulation.

This chapter will focus primarily on the Stock Exchange’s regulation of listed entities.

**OCI**

The OCI regulates insurers and supervises a self-regulatory regime governing insurance intermediaries, with a view to protecting the interests of policyholders and promoting the general stability of the insurance industry. It is responsible for granting authorisations to insurers to carry on insurance businesses and regulating them primarily via the examination of their financial statements and business returns.
Insurance intermediaries (ie, agents and brokers) are generally required to be registered with one of the applicable self-regulatory organisations (SROs), which ensure their proper conduct. They are the Insurance Agents Registration Board (set up by the Hong Kong Federation of Insurers), the Hong Kong Confederation of Insurance Brokers (HKCIB) and the Professional Insurance Brokers Association (PIBA). The OCI maintains general oversight over the SROs.

Note that legislative reform is underway to replace the self-regulatory regime with an independent regulator and new regulatory regime for the insurance industry – see Question 22 below for further details.

**Overlapping jurisdictions**

Where an individual or a corporation provides services falling within the jurisdiction of two or more regulators, they will be subject to regulation by each of the regulators concerned. For example, HKMA authorised institutions which also engage in certain SFC regulated activities must be registered with the SFC.

A number of Memoranda of Understanding (MOUs) have been signed between regulatory bodies setting out their roles and responsibilities where there is an overlap of jurisdiction. An example is the MOU between the SFC and the HKMA regarding the supervision and regulation of HKMA authorised institutions which conduct SFC regulated activities. In this regard, the HKMA remains the front-line regulator of such institutions with respect to the day-to-day supervision of their SFC regulated activities, but both the HKMA and the SFC may investigate and take enforcement action against such institutions in relation to their SFC regulated activities.

**3. WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN HONG KONG?**

The principal legislation regulating the securities and futures market is the SFO. From time to time, the SFC also issues non-statutory codes and guidelines, including codes of conduct and other codes and guidelines on specific SFC regulated activities, products or issues. The key code of conduct is the *Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (SFC Code of Conduct)*.

The banking activities of HKMA authorised institutions in Hong Kong are governed by the *Banking Ordinance (BO)* and the codes and guidelines issued by the HKMA (such as those embodied in the HKMA’s *Supervisory Policy Manual and Guide to Authorisation*).

The Stock Exchange regulates by reference to the Listing Rules of the Main Board and the GEM (*Listing Rules*), the *Rules of the Exchange* and the *Options Trading Rules of the Stock Exchange*. The Stock Exchange has also issued various procedures and practice notes, as well as a model code which regulates securities trading by directors of listed entities. The Futures Exchange regulates by reference to the *Rules of the Futures Exchange* and various regulations and procedures. Listed entities, SE participants, FE participants and their related parties are contractually bound to comply with the above rules.

The *Insurance Companies Ordinance (ICO)* empowers the OCI to regulate authorised insurers and prescribes a self-regulatory framework for insurance intermediaries. The insurance intermediaries are subject to the regulations and codes of the SROs of which they are members.

**4. DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?**

No. With regards to listing matters, the Stock Exchange may only take action against listed entities and their related parties (such as directors, senior management, professional advisers, substantial shareholders and subsidiaries). The enforcement powers of the HKMA are generally only exercisable against authorised institutions, money brokers and individuals approved by it, while the OCI regulates authorised insurers and oversees the self-regulatory regime for insurance intermediaries.

Comparatively, as indicated under Question 2 above, the SFC’s enforcement powers have a much wider remit. The powers accorded by the SFO enable the SFC to (among others):

- take disciplinary action against corporations and individuals licensed by or registered with it (including HKMA authorised institutions which engage in SFC regulated activities);
- initiate criminal action against unlicensed/unregistered corporations and individuals who seek to engage in SFC regulated activities without its permission;
- take civil or criminal action against any person who/which has engaged in market misconduct;
- take civil action against any person who has contravened or may contravene the SFO or other specified legislative provisions, such as those relating to prospectuses and anti-money laundering requirements; and
- take civil action against listed corporations and their officers, for example, where the business of the listed corporations has been conducted in a manner involving defalcation, fraud, misfeasance or other misconduct, or where there has been a failure to disclose inside information.

**5. WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?**

The SFC, the HKMA and the OCI have statutory powers of investigation under the SFO, the BO and the ICO respectively. Where listing matters are concerned, the Stock Exchange derives its powers of investigation from its contractual relationship with listed entities and their related parties.
The table below contains a brief overview of the powers of investigation of these regulatory bodies:

<table>
<thead>
<tr>
<th>POWERS</th>
<th>SFC</th>
<th>HKMA</th>
<th>STOCK EXCHANGE (with regards to listing matters)</th>
<th>OCI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who conducts investigations</td>
<td>SFC</td>
<td>HKMA or an inspector appointed by the Financial Secretary</td>
<td>Stock Exchange</td>
<td>OCI</td>
</tr>
<tr>
<td>Who are required to assist in investigations</td>
<td>Any individual or entity may potentially be required to assist in investigations, given the wide remit of the SFO. (Different investigatory powers apply depending on the type of individual or entity)</td>
<td>Depending on the type of investigation, persons who/which may be required to assist include current/former authorised institutions, their current/former related entities, their current/former directors, managers, employees and agents, and any person who has in his/her possession information relevant to the investigation</td>
<td>Listed entities, their directors and other parties, such as sponsors and compliance advisers</td>
<td>Authorised insurers, insurance intermediaries and approved bodies of insurance brokers (currently the HKCIB and the PIBA), their related parties (such as current/former directors, controllers and employees), and any person in possession of relevant books and papers</td>
</tr>
<tr>
<td>Require production of records and documents</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Require a party to answer questions or provide information</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Conduct interviews</td>
<td>Yes</td>
<td>Only in investigations conducted by an inspector appointed by the Financial Secretary</td>
<td>No explicit contractual power to conduct interviews, but directors of listed entities and other parties (such as sponsors and compliance advisers) are contractually obliged to attend any meetings requested by the Stock Exchange</td>
<td>No, but the OCI has the power to require a person to explain any books or papers produced at its request</td>
</tr>
<tr>
<td>Conduct searches at premises</td>
<td>Yes, the SFC may apply for a warrant from a magistrate to enter and search premises. In the case of a SFC-licensed entity (or its associated entity), the SFC may enter premises without a warrant for compliance inspections</td>
<td>Where a magistrate is satisfied that a criminal offence under the BO may have been committed, he/she may issue a warrant empowering a police officer to enter and search premises. The HKMA may make inspection visits to authorised institutions and examine their books, accounts and transactions</td>
<td>No</td>
<td>No statutory power, but the OCI makes inspection visits to insurers as a matter of practice as part of its supervisory role</td>
</tr>
</tbody>
</table>
Investigations under the SFO

In broad terms, save for the categories of disclosure permitted under the SFO:

- the SFC and the HKMA (and their employees and agents) are required to preserve the secrecy of any information acquired by them by virtue of their appointment or performance of their functions under the SFO; and
- persons who directly or indirectly receive information relating to an investigation under the SFO (such as suspects and witnesses) are also required to preserve the secrecy of the information.

Examples of permitted disclosure under the SFO include where a SFC employee is disclosing information (for example to a suspect or witness at an interview) for the purpose of carrying out an investigation, where the information is already in the public domain, where disclosure is for the purpose of seeking legal or other professional advice, where disclosure is in connection with judicial or other proceedings to which the person is a party, or in accordance with a court order or the law. Consent for disclosure may also be sought from the SFC.

Guidance from the SFC in relation to secrecy obligations is available on its website (currently located at http://www.sfc.hk/web/EN/regulatory-functions/enforcement/secrecy-provision.html).

Investigations under the BO and the ICO

The HKMA and the OCI (and their employees and agents) are bound by secrecy obligations in respect of investigations conducted under the BO and the ICO respectively. The BO and the ICO do not, however, expressly make clear that the secrecy obligations also apply to suspects and witnesses in such investigations. As part of the reform of the insurance regulatory regime, amendments to the ICO are currently being proposed to make it clear that suspects and witnesses in investigations under the ICO are bound by secrecy obligations.

For information on the reform of the insurance regulatory regime generally, please see Question 22 below.

6. ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?

Investigations under the SFO

Secrecy provisions apply to information regarding investigations conducted by the SFC and the HKMA under the SFO. A breach of these secrecy provisions constitutes a criminal offence.

In broad terms, save for the categories of disclosure permitted under the SFO:

- the SFC and the HKMA (and their employees and agents) are required to preserve the secrecy of any information acquired by them by virtue of their appointment or performance of their functions under the SFO; and
- persons who directly or indirectly receive information relating to an investigation under the SFO (such as suspects and witnesses) are also required to preserve the secrecy of the information.

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For information on the reform of the insurance regulatory regime generally, please see Question 22 below.

7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCRIMINATION AND LEGAL PROFESSIONAL PRIVILEGE?

Where interviews with the SFC and the HKMA are concerned, the usual practice is that persons required to attend such interviews may be accompanied by their legal advisers, but must personally respond to questions put to them. The Listing Rules do not state whether persons requested by the Stock Exchange to attend meetings may be accompanied by their legal advisers. However, such right is expressly provided under the Listing Rules in respect of disciplinary hearings conducted by the Stock Exchange.

Some statutory provisions relating to investigations expressly limit the common law and constitutional right to privilege against self-incrimination. For example, certain provisions under the SFO requiring a person to provide information and answers state that the person is not excused from complying with the requirement only on the ground that to do so might lead to self-incrimination. However, if he/she claims, prior to providing the information or answer, that it might lead to self-incrimination, then the requirement and the information provided, or the question and answer, shall not be admissible in evidence against the person in criminal proceedings in a court of law (except in relation to, among others, offences relating to non-compliance with SFO investigation provisions or to perjury).

Documents which are subject to legal professional privilege are generally exempt from disclosure to regulatory bodies. In broad terms, legal professional privilege covers any confidential
communications between: (a) a lawyer and his/her client where the purpose of the communications is the seeking or giving of legal advice; or (b) a lawyer and his/her client, or a lawyer/client and a third party (such as a consultant or an expert witness) where the dominant purpose is advising on or obtaining evidence in relation to actual or contemplated litigation. For more information, please see Herbert Smith Freehills’ legal guide, Privilege in Asia Pacific.

8. CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

Notwithstanding the secrecy provisions surrounding investigations conducted under the SFO, the BO and the ICO, the SFC, the HKMA and the OCI are permitted to disclose information obtained in the course of their investigations for a number of purposes. They include, for example, criminal proceedings (whether under the above ordinances or otherwise), civil proceedings arising out of the ordinances, disclosure to the police or the Independent Commission Against Corruption (ICAC) where criminal and/or bribery-related offences may be involved, disclosure to overseas regulators (subject to certain conditions being met), and to each other to enable the discharge of each other’s functions. In addition, information obtained by the Stock Exchange can be provided to the SFC.

9. WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?

The table below sets out the key actions that these bodies may take in exercising their regulatory functions:

<table>
<thead>
<tr>
<th>BODIES</th>
<th>KEY ACTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SFC</td>
<td>• Conduct disciplinary proceedings against a licensed/registered person</td>
</tr>
<tr>
<td></td>
<td>• Commence civil or criminal proceedings against a person suspected of engaging in market misconduct or other specified contraventions of the SFO</td>
</tr>
<tr>
<td></td>
<td>• Apply to the court for remedial and injunctive orders against a person contravening the SFO or other specified legislative provisions or conditions, such as an order to restrain or prohibit certain acts, to freeze assets, to pay damages or to take steps to restore the parties to any transaction to their pre-transaction positions</td>
</tr>
<tr>
<td></td>
<td>• Apply to the court for orders in relation to a current/former listed corporation, such as an order to restrain or prohibit certain acts, or to prohibit culpable individuals from acting as directors of such corporation (or other corporations) for a specified period</td>
</tr>
<tr>
<td></td>
<td>• Apply to the court for a winding up order against a corporation (other than a HKMA authorised institution) or a bankruptcy order against a SFC licensed individual</td>
</tr>
<tr>
<td></td>
<td>• Direct the Stock Exchange to suspend dealings in any listed securities or to cancel the listing of securities</td>
</tr>
<tr>
<td>HKMA</td>
<td>• Conduct disciplinary proceedings against an authorised institution or its related parties</td>
</tr>
<tr>
<td></td>
<td>• Require an authorised institution to take specified action in relation to its affairs, business or property</td>
</tr>
<tr>
<td></td>
<td>• Appoint an external adviser or a manager in relation to the affairs, business and property of an authorised institution for a stated period</td>
</tr>
<tr>
<td></td>
<td>• Require an authorised institution to take remedial action in relation to breach of capital requirements</td>
</tr>
<tr>
<td></td>
<td>• Require an authorised institution to submit a report to be prepared by auditors approved by the HKMA</td>
</tr>
<tr>
<td></td>
<td>• Following an investigation initiated by the HKMA, the Financial Secretary may apply to the court for a winding up order against an authorised institution</td>
</tr>
<tr>
<td></td>
<td>• Following an investigation initiated by the HKMA, the Financial Secretary may refer a matter to the Secretary for Justice if it appears that a criminal offence may have been committed</td>
</tr>
<tr>
<td></td>
<td>• Refer a matter under investigation to the SFC, if it involves the carrying on of a SFC regulated activity</td>
</tr>
<tr>
<td>Stock Exchange</td>
<td>• Conduct disciplinary proceedings against a listed entity or its related parties</td>
</tr>
<tr>
<td>(with regards to listing matters)</td>
<td>• Suspend dealings in, or cancel the listing of, any securities, whether requested by the listed entity or not</td>
</tr>
<tr>
<td></td>
<td>• Refer a matter to the SFC for further investigation</td>
</tr>
</tbody>
</table>
### OCI
- Exercise powers of intervention on an authorised insurer, such as:
  - imposing restrictions on business
  - imposing requirements on investments and/or maintenance of assets
  - limiting premium income
  - requiring an authorised insurer to take specified action in relation to its affairs, business or property
  - appointing an external adviser or a manager in relation to the affairs, business and property of an authorised insurer for a stated period
- Apply to the court for a winding up order against an authorised insurer or an insurance intermediary, or a bankruptcy order against an insurance intermediary who is an individual
- Require an insurer, an insurance agent, a body of insurance brokers (currently the HKCIB and the PIBA) or an insurance broker to supply information that verifies their compliance with various requirements

### NOTE
With regards to SE participants and FE participants, the Stock Exchange and the Futures Exchange may conduct disciplinary proceedings against them or refer matters to the SFC where appropriate.

### 10. WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?
If a regulatory body considers that the conduct of an entity or an individual regulated by it does not meet the standard required in performing his/her/its respective functions and duties, the following sanctions may be imposed:

<table>
<thead>
<tr>
<th>BODIES</th>
<th>KEY SANCTIONS</th>
</tr>
</thead>
</table>
| **SFC** | - Revoke or suspend a licence/registration  
- Revoke or suspend an approval to act as a responsible officer of a licensed corporation  
- Prohibit a corporation or an individual from applying for a licence/registration or from applying for approval to be a responsible officer, executive officer or relevant individual temporarily or permanently  
- Issue a reprimand  
- Impose a fine |
| **HKMA** | - Revoke or suspend the authorisation of an authorised institution  
- Serve a notice of objection on a controller of an authorised institution  
- Withdraw the consent to act as a chief executive or director of an authorised institution  
With regards to an employee of an authorised institution who engages in SFC regulated activities:  
- Remove or suspend a relevant individual’s particulars from the HKMA register, after consultation with the SFC  
- Withdraw or suspend the consent for an individual to act as an executive officer, after consultation with the SFC |
| **Stock Exchange (with regards to listing matters)** | - Issue a private reprimand, public criticism or public censure against a listed entity and/or its related parties (such as directors, senior management, professional advisers, substantial shareholders and subsidiaries)  
- Report the offender’s conduct to the SFC, another regulatory authority (including a professional body) or an overseas regulatory authority  
- Require rectification or other remedial action to be taken  
- Suspend or cancel the listing of an entity’s securities  
- Order that the facilities of the market be denied for a specified period to a listed entity, and prohibit dealers and financial advisers from acting for that entity  
- Ban for a stated period a listed entity’s professional adviser (such as legal adviser, accountant and property valuer) from representing a party in relation to specified matters coming before the Listing Division or the Listing Committee of the Stock Exchange  
- State publicly that the retention of office by a director of a listed entity is prejudicial to the interest of investors |
**KEY SANCTIONS**

**OCI**
- Exercise powers of intervention on an authorised insurer
- Withdraw the approval of a body of insurance brokers (currently the HKCIB and the PIBA)
- Direct an authorised insurer to de-register an appointed insurance agent

The power to take disciplinary action against insurance intermediaries is, however, largely delegated to the SROs. Each SRO has its own disciplinary procedures. The disciplinary sanctions which a SRO may impose include issuing a reprimand, suspending/terminating the intermediary’s appointment or membership, issuing a fine (against brokers only) and taking any other action as the SRO deems fit. Similar sanctions may be imposed on the intermediary’s officers or employees.

**NOTE:** With regards to SE participants and FE participants, the disciplinary sanctions which the Stock Exchange and the Futures Exchange may impose include revocation or suspension of participation or trading rights, a fine and restrictions on trading activities.

**11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?**

Yes, it is generally possible to initiate without prejudice discussions with the regulatory bodies to seek to reach an agreed resolution in enforcement actions.

The SFO expressly provides for settlement of disciplinary actions against licensed/registered persons where the SFC considers it appropriate to do so in the interest of the investing public or in the public interest. The SFC and the HKEx have issued guidance on their approach to settlement of disciplinary actions.

**12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?**

Review of disciplinary decisions made by the SFC (and the HKMA where it relates to the conduct of SFC regulated activities) can be sought from the Securities and Futures Appeals Tribunal (SFAT). A party dissatisfied with a decision of the SFAT may file an appeal to the Court of Appeal, but only on a point of law.

Decisions made by the Market Misconduct Tribunal (MMT) relating to civil market misconduct and breaches of the requirement to disclose inside information may be appealed to the Court of Appeal on a point of law (and in certain circumstances, on a question of fact).

The HKMA’s decision to revoke or suspend an institution’s authorisation (as well as a number of other regulatory decisions) may be appealed to the Chief Executive in Council. An authorised institution may appeal to the Banking Review Tribunal in respect of the requirement imposed on it by the HKMA to take remedial action in relation to breach of capital requirements.

Other civil and criminal decisions made under the SFO or the BO in the first instance by a court may be appealed within the court hierarchy.

Reviews of disciplinary decisions of the Listing Committee of the Stock Exchange regarding listing matters are heard by a differently constituted Listing Committee. A further and final review by the Listing Appeals Committee is available in relation to certain disciplinary sanctions.

Certain decisions of the OCI may be appealed to the Financial Secretary. As for disciplinary decisions made by the SROs against their member insurance intermediaries, the SROs’ own disciplinary procedures provide avenues of appeal. The appeal lies to another division or committee within the SROs, rather than to a court.

In general, a regulatory body’s decision may be subject to judicial review where grounds exist under administrative law. This may be where the decision maker has acted outside of its legal authority or irrationally, or has failed to follow a fair procedure.

**13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (EG, INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENTION?**

The SFO has created a parallel civil and criminal regime to combat market misconduct. Market misconduct includes 6 types of acts, namely, insider dealing, false trading, price rigging, stock market manipulation, disclosure of information about prohibited transactions and disclosure of false or misleading information inducing transactions.

Pursuant to the SFO, the SFC may:
- institute civil proceedings in the MMT, if it appears to the SFC that market misconduct has or may have taken place (the MMT may impose a range of civil sanctions, including disgorgement of profits gained or loss avoided); or
- institute, or recommend the Secretary for Justice to institute, criminal proceedings against parties suspected to have engaged in market misconduct, which may result in severe penalties on conviction, including a fine of up to HK$10 million and/or imprisonment of up to 10 years.

Note that a civil MMT action may not be commenced against a person if criminal proceedings have previously been instituted against the person for the same misconduct, and vice versa.

**14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?**

Under the SFO, an investor may bring civil action to seek recovery of monetary loss sustained from:
- a person who/which has committed an act of market misconduct (one of the 6 acts referred to under Question 13 above) or an offence relating to certain securities or futures or other transactions;
14. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?

The HKMA has signed similar MOUs and/or co-operative agreements with its counterparts in China and 22 other jurisdictions. The OCI has signed agreements with 11 regulatory bodies and associations outside of Hong Kong. The HKEx has also entered into MOUs with a number of stock exchanges and derivatives exchanges outside of Hong Kong.

The SFO, the BO and the ICO contain provisions setting out the circumstances under which the SFC, the HKMA and the OCI may provide assistance to overseas regulators.

17. WHICH REGULATORY BODIES ARE EMPOWERED TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

The ICAC is the principal agency responsible for investigating and preventing corruption in Hong Kong under the Prevention of Bribery Ordinance and the Independent Commission Against Corruption Ordinance.

The police and the Customs and Excise Department investigate money laundering offences under the Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP) and the Organised and Serious Crimes Ordinance (OSCO). The police, the Customs and Excise Department, the Immigration Department and the ICAC are jointly responsible for investigations arising out of the United Nations (Anti-Terrorism Measures) Ordinance (UNATMO).

The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO), which came into force on 1 April 2012, imposes on financial institutions statutory requirements regarding customer due diligence and record-keeping. Such financial institutions include HKMA authorised institutions, SFC licensed corporations, authorised insurers and insurance intermediaries, and licensed money service operators. The HKMA, the SFC, the OCI and the Commissioner of Customs and Excise are responsible for supervising compliance with the AMLO, and investigating any suspected breaches of the requirements under the AMLO. The regulators may also impose disciplinary sanctions for breaches of such requirements. The HKMA, the SFC and the OCI have also issued guidelines to the industries under their respective supervision.

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/ NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORIZATION APPLICATION PROCESS?

Yes.

Applications to the SFC

A person who applies for a licence or registration from the SFC is required to provide the SFC with such information as the SFC may reasonably require to consider the application. This includes, among others, whether the applicant is or has been (in Hong Kong or elsewhere) convicted of or charged with any criminal offence (with limited exceptions), subject to any disciplinary action or investigation by a regulatory or criminal investigatory body, subject to any order of a court or other competent authority for fraud, dishonesty or misfeasance, or in default of a judgment or court order.
In considering an application for a licence or registration, the SFC shall have regard to, among others, the applicant’s ability to carry on the SFC regulated activity in question competently, honestly and fairly and the applicant’s reputation, character and reliability. Providing false or misleading information in an application to the SFC amounts to a criminal offence.

Applications to the HKMA
Where a company applies to be an authorised institution, the HKMA needs to be satisfied, as part of the minimum criteria for authorisation, that the business of the company is and will be carried on with integrity, prudence and professional competence. In addition, each person who is, or is to be, a director, controller, chief executive or executive officer of the company must be a fit and proper person to hold the particular position. The company must also have adequate systems of control to ensure that each person who is, or is to be, a manager of the company is a fit and proper person to hold such position.

Matters which are relevant to the above considerations (and which need to be notified to the HKMA) include, among others, criminal convictions (with limited exceptions), investigations, disciplinary actions or sanctions by regulatory authorities or professional bodies and dismissals from office or employment, in Hong Kong or elsewhere.

Further, an individual who has been convicted in any place of an offence involving fraud or dishonesty must obtain the HKMA’s consent before becoming an employee of an authorised institution.

Where the HKMA considers that an authorised institution has failed to provide it with material information concerning the institution or has provided it with information which is false, misleading or inaccurate to a material extent, it may revoke the authorisation of the institution. This applies to information provided to the HKMA prior to authorisation, at the application stage. A person who intends to be a director, controller, chief executive or executive officer of an authorised institution and fails to provide information required by the HKMA or provides information which is false in a material particular commits a criminal offence.

Applications to the OCI
An insurer is required to furnish to the OCI information about each of its directors and controllers as part of its application for authorisation. Such information includes, among others, whether the director or controller has (in Hong Kong or elsewhere) been convicted of any criminal offence (with limited exceptions), been censured, disciplined or publicly criticised by any professional body in the last 10 years, or been adjudged by a court civilly liable for fraud, misfeasance or other misconduct in connection with the formation or management of any body corporate or insurer. Similar information is required to be furnished to the OCI where an authorised insurer subsequently proposes to appoint a controller.

Provision of misleading or inaccurate information to the OCI is a ground for the exercise of powers of intervention by the OCI (examples of which are set out under Question 9 above).

19. IS A FINANCIAL INSTITUTION IN HONG KONG UNDER ANY OBLIGATION TO REPORT TO THE HONG KONG REGULATOR(S) ANY MISCONDUCT/ NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

There are a number of provisions under legislation and non-statutory guidelines issued by the regulators imposing obligations on financial institutions to notify the regulators of instances of misconduct and non-compliance. The following are some examples.

The SFC Code of Conduct imposes a self-reporting obligation on financial institutions which are licensed by or registered with the SFC. They are required to report to the SFC immediately upon the happening of any of the following (among others):

- material non-compliance by them or their employees with any law, rules, regulations, codes administered or issued by the SFC, exchange or clearing house rules and any other applicable regulatory requirements (or where such non-compliance is suspected);
- material non-compliance by their clients with the market misconduct provisions under the SFO that they reasonably suspect may have occurred;
- disciplinary measures taken against them by any regulatory or other professional or trade body, or the refusal, suspension or revocation of their regulatory licences, consents or approvals; and
- material failures in the operation of their trading, accounting, clearing or settlement systems or equipment.

Under the HKMA’s Supervisory Policy Manual, authorised institutions should notify the HKMA (and any other relevant regulatory bodies or law enforcement authorities) as soon as practicable of matters which may negatively affect the fitness and propriety of their board members or members of their senior management.

In addition, certain provisions under the SFO and the BO (and their subsidiary legislation) impose obligations to notify the SFC and the HKMA respectively of non-compliance with specific requirements, such as requirements relating to financial resources and record keeping under the SFO and its subsidiary legislation.

Separately, where there are any changes to the information previously provided to the SFC, the HKMA or the OCI as part of an application for a licence or authorisation (as mentioned under Question 18 above), such changes are required to be notified to the regulator in question. Hence, an event may trigger both the obligation to report non-compliance or misconduct and the obligation to report changes to information previously provided.


20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

Yes, “whistle-blowing” obligations are imposed by a number of ordinances. The following are some examples:

- Under the SFO, an auditor of a SFC licensed corporation or certain associated entities is obliged to report to the SFC (and where the associated entity is a HKMA authorised institution, the HKMA as well) any matter which, in its opinion, constitutes a failure on the part of the SFC licensed corporation or associated entity to comply with certain requirements under the SFO (such as those relating to financial resources). The auditor is also obliged to report any matter which, in its opinion, adversely affects to a material extent the financial position of the SFC licensed corporation or associated entity, or if it proposes to include a qualification or adverse statement in the financial reports of the licensed corporation or associated entity. Similar obligations to report to the HKMA are imposed on auditors of authorised institutions under the BO.

- Under the ICO, current and former auditors, actuaries and accountants of current and former insurers have reporting obligations in various circumstances. These include situations where they become aware of matters which adversely and materially affect the financial condition of an insurer, matters creating a material risk that a fund maintained by an insurer in respect of its long term business may be insufficient to meet the liabilities attributable to that fund, and evidence of a failure by an insurer to comply with certain requirements or conditions under the ICO.

- Under the UNAMTO, the DTROP and the OSCO, a person who knows or suspects that any property is terrorist property, represents proceeds of or was used/is intended to be used in connection with drug trafficking or any other indictable offence is required to disclose the knowledge or suspicion (and any matter on which the knowledge or suspicion is based) to the Joint Financial Intelligence Unit (JFIU), via what is known as “suspicions transaction reports”. The JFIU is jointly run by the police and the Customs and Excise Department. A failure to disclose in accordance with these three ordinances is an offence and an offender is liable on conviction to a fine of HK$50,000 and imprisonment for three months.

See also the reporting obligations described under Question 19 above.

21. HOW ARE HEDGE FUNDS REGULATED?

Hedge funds (to the extent that they fall within the definition of “collective investment schemes” under the SFO) are subject to the rules in Chapter 8.7 of the SFC’s Code on Unit Trusts and Mutual Funds, and other guidelines and circulars issued by the SFC, such as the Guidance on Internal Product Approval Process issued by the SFC on 30 April 2014. An offering document to invest in a hedge fund must be authorised by the SFC before being issued to the Hong Kong public. Hedge fund managers and their employees must be licensed by the SFC to conduct the SFC regulated activities which require licensing under the SFO.

The SFC derives its fund authorisation powers from section 104 of the SFO. When considering applications for the authorisation of hedge funds, the SFC will consider a number of factors, including the choice of asset class and use of alternative investment strategies. Hedge fund management companies are subject to strict requirements, including the requirement to have the requisite competence, expertise and appropriate risk management and internal controls systems, and to be adequately and suitably staffed. The SFC would generally expect at least US$100 million of total assets under management, while the minimum level of initial subscription by each investor in a scheme is US$50,000 (except for a fund of hedge funds, where the minimum initial subscription is US$10,000). There is no minimum subscription threshold for a scheme which provides at least a 100% capital guarantee.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

The two key areas of reform which are expected to be implemented in the near future relate to the regulation of the insurance industry and the OTC derivatives market.

Independent Insurance Authority

The OCI is a government department and remains the only financial services regulator in Hong Kong which is still part of the government. This is not in line with international practice where financial regulators are financially and operationally independent of the government. In addition, as discussed above, the existing insurance regulatory regime is largely self-regulatory. The SROs supervise their members (insurance intermediaries) in accordance with their respective regulations and codes. Although the OCI maintains general oversight over the SROs, it does not directly regulate the insurance intermediaries.

Significant reform is underway to establish an independent insurance authority (IIA) in place of the OCI and to overhaul the existing self-regulatory regime. The Insurance Companies (Amendment) Bill 2014 (ICAB 2014), which introduces amendments to the ICO and is currently being considered by the Legislative Council, proposes the following new regime:

- The IIA is to be conferred a wide range of regulatory powers over insurers and insurance intermediaries, not unlike those available to other financial services regulators (such as the SFC), relating to inspection, investigation, imposition of disciplinary sanctions and prosecution of offences.

A licensing system is to be established to replace the self-regulatory regime administered by the SROs. The IIA will grant 5 types of licences under 2 broad categories of insurance intermediaries (agents and brokers) for the carrying out of specified “regulated activities”. The 5 types of licences mirror the existing registration categories of the SROs. The licensees must (among other things) be fit and proper.

- All existing insurance intermediaries validly registered with the SROs before commencement of the new regime are to be deemed as licensees under the new regime for 3 years.

- An Insurance Appeal Tribunal is to be established to consider appeals against specified decisions made under the amended ICO.
The government is aiming to establish the IIA sometime in 2015, following passage of the ICAB 2014 by the Legislative Council.

**OTC derivatives regulatory regime**

As indicated under Question 2 above, reform is currently underway to establish a regulatory regime for the OTC derivatives market in Hong Kong. Following two rounds of joint consultation by the SFC and the HKMA, the *Securities and Futures (Amendment) Ordinance 2014 (SFAO 2014)* was enacted in April 2014. The SFAO 2014 provides (among other things) the framework for the new regulatory regime. It has yet to commence operation, pending finalisation of the subsidiary legislation setting out the detailed requirements under the regime.

The SFAO 2014 provides for the following (among other things):

- Activities in the OTC derivatives market will be jointly overseen and regulated by the SFC and the HKMA.
- Certain OTC derivative transactions (to be specified in subsidiary legislation) will be subject to mandatory reporting, clearing and trading requirements, and their related record keeping requirements.
- The above requirements will apply principally to HKMA authorised institutions, approved money brokers, SFC licensed corporations and other persons to be specified in subsidiary legislation.
- 2 new types of SFC regulated activities will be introduced under the licensing regime, namely, dealing in OTC derivative products or advising on OTC derivative products, and providing client clearing services for OTC derivative transactions. In addition, 2 existing SFC regulated activities (providing automated trading services and asset management) will be broadened to cover OTC derivative transactions/products.
- The SFC and the HKMA will also have oversight of "systemically important participants", being market participants who are not regulated by the SFC or the HKMA, but whose positions and activities in the OTC derivatives market may raise concerns of potential systemic risk.

Consultation is underway on the first of a series of subsidiary legislation to be enacted under the new regime, which sets out detailed mandatory reporting requirements and related record keeping requirements. The SFC and the HKMA intend to implement the SFAO 2014 in phases, beginning with mandatory reporting, followed by mandatory clearing and then mandatory trading.

In the meantime, the HKMA has implemented an interim reporting arrangement whereby all licensed banks are required to report specified OTC derivative transactions to the HKMA’s trade repository.

In addition, OTC Clearing Hong Kong Limited, a subsidiary of the HKEx, has been established to provide clearing services for OTC derivative transactions.
1. **WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN INDIA?**

The main bodies are:
- Securities and Exchange Board of India (SEBI);
- Reserve Bank of India (RBI);
- Ministry of Finance (MoF);
- Insurance Regulatory and Development Authority (IRDA); and
- Forward Markets Commission (FMC).

2. **WHAT DOES EACH OF THESE BODIES REGULATE?**

**SEBI**
SEBI is the apex body regulating the securities markets in India. It was established to protect the interests of investors in securities and to permit the development and effective regulation of the securities markets. SEBI regulates the business in stock exchanges and other securities markets. SEBI is responsible for registering and regulating the operations of various intermediaries in the securities markets including stockbrokers, foreign institutional investors, merchant bankers, underwriters, portfolio managers, depositories, and credit rating agencies. It also regulates venture capital funds and investment schemes including mutual funds. SEBI also has primary responsibility for preventing, prohibiting and punishing fraudulent and unfair trade practices relating to the securities markets.

**RBI**
RBI regulates the banking industry and generally performs the obligations of a central bank. Its functions include acting as a banker to the government, regulating the issue of currency in India, acting as a banker to other commercial banks, exercising control over the volume of credit of commercial banks to maintain price stability, controlling advances granted by commercial banks and developing policies on the rates of interest on which advances may be granted by banks. RBI is also responsible for maintaining the official exchange rate of the rupee. RBI acts as the custodian of India’s international currency reserves and administers foreign exchange controls.

In addition to its traditional central banking functions, RBI has certain non-monetary functions including supervision of banks and non-banking institutions (whether or not such institutions receive deposits from the public), ensuring proper management of banks and promoting sound banking practices. RBI also regulates transactions in derivatives, money and market instruments, other than derivatives/instruments traded on a recognised stock exchange. Further, RBI has been designated as the regulatory authority for regulating “payment systems” in India.

**MoF**
MoF also plays an important role in the financial sector. Prior to the reforms of the 1990’s, MoF was responsible for supervising the rules and regulations governing the banking and securities markets. MoF is involved in legislative issues and policy matters that are beyond the domain of any one regulator.

**IRDA**
IRDA regulates the insurance sector in India. It regulates, promotes and ensures the orderly growth of the insurance and re-insurance business. IRDA also administers legislation governing the operation of insurance companies and insurance intermediaries with a view to protecting the interests of policyholders.

**FMC**
FMC is the primary regulatory authority of the forward commodities market. Its functions, which are mainly advisory, are administered by the Ministry of Consumer Affairs and Public Distribution. FMC advises the Central Government in relation to the recognition or withdrawal of recognition of intermediaries, associations and other participants in the forward market. It also has a responsibility to keep the forward market under observation, collect information and make recommendations for improvements in the working of the forward market. The forward market is also regulated by rules and by-laws of registered associations.

3. **WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN INDIA?**

**Securities regulation in India**
The principal legislation regulating the securities markets is the Securities and Exchange Board of India Act 1992 (SEBI Act), the Securities Contracts (Regulation) Act 1956 (SCR Act) and associated subsidiary legislation. SEBI also issues guidelines and circulars regulating specific issues such as investments by foreign institutional investors and foreign venture capital funds. SEBI also monitors stock exchanges through subsidiary legislation under the SEBI Act and the SCR Act. Stock exchanges, on the other hand, regulate the securities markets on the basis of contractual arrangements that make their rules and the listing agreement binding on listed entities and member intermediaries like stockbrokers.
Banking regulation in India

The banking sector is primarily governed by the Reserve Bank of India Act 1934 and the Banking Regulation Act 1949. RBI also issues various directions, notifications, guidelines and circulars under these statutes from time to time. The subsidiary legislation plays an important part in the regulation of institutions in the financial sector, including banks and non-banking financial companies.

Keeping pace with technological development, the Indian Parliament enacted the Payment and Settlement Systems Act 2007 (PSS Act), under which RBI is empowered to determine standards, issue guidelines, directions and lay down policies for the regulation and supervision of “payment systems” operating in India. Pursuant to the power conferred under the PSS Act, RBI issued guidelines for the regulation of mobile banking and pre-paid instruments.

In February 2012, the Factoring Regulation Act 2011 (Factoring Act) came into force. The Factoring Act provides a framework for factoring and regulates the assignment of receivables to a factor. It is intended to encourage factoring as a means of trade finance in India.

On 22 February 2013, RBI released guidelines for the licensing of new banks in the private sector (Banking Guidelines). The Banking Guidelines lay down a framework for the granting of banking licences by RBI, including to corporate entities and non-banking financial companies (NBFCs). This is a significant departure from the earlier policy of RBI, under which a bank promoted by a single industrial house was not eligible for a banking licence. The Banking Guidelines provide that entities/groups in the private sector, entities in the public sector and NBFCs are eligible to set up a bank through a wholly-owned Non-Operative Financial Holding Company (NOFHC). The NOFHC must be wholly-owned by the promoter/promoter group and must hold the bank as well as all the other financial services entities of the group.

As per the Banking Guidelines, the initial minimum paid-up voting equity capital for a bank must be INR5 billion. Further, the bank’s shares must be compulsorily listed within 3 years of commencement of business. Note that the foreign direct investment (FDI) limits for new banks are not on par with the existing thresholds. Currently, existing banks can have up to 74% FDI. New banks are not permitted to have more than 49% aggregate FDI for the first 5 years. The Banking Guidelines also provide that at least 50% of the directors of the NOFHC must be independent directors.

Foreign banks in India

At present, foreign banks have a presence in India only through branches. In 2005, RBI released the Road map for presence of foreign banks in India with the aim of a gradual increase in the presence of foreign banks in a synchronised manner. RBI subsequently issued a discussion paper on the mode of presence of foreign banks in India in January 2011. Taking into account the feedback received on the discussion paper, RBI released the framework for the setting up of a wholly-owned subsidiary (WOS) by foreign banks in India on 6 November 2013.

The policy incentivises existing foreign bank branches to convert into WOS by offering near national treatment. The framework further provides that certain banks such as those with complex structures, which do not provide adequate disclosure in their home jurisdiction or which are not widely held or are from jurisdictions having legislation giving a preferential claim to depositors of home country in a winding up proceeding etc would be permitted to enter India only in the WOS mode. The initial minimum paid-up voting equity capital for a WOS must be INR5 billion for new entrants. Existing branches of foreign banks desiring to convert into WOS must have a minimum net worth of INR5 billion.

Insurance sector regulation in India

The substantive rules governing the insurance sector are contained in the Insurance Act 1938 and the Insurance Regulatory and Development Authority Act 1999 (IRDA Act). The IRDA Act along with subsidiary legislation govern insurers, re-insurers and insurance intermediaries.

Forward commodities market regulation in India

The legislation governing the forward commodities market are the Forward Contracts (Regulation) Act 1952 (FCR Act) and the Forward Contracts (Regulation) Rules 1954. The FCR Act empowers the Central Government (in consultation with FMC) to regulate commodity exchanges and permitted forward contracts in specified commodities.

4. DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?

No. For instance, both RBI and SEBI can impose fines and initiate actions that may result in imprisonment. On the other hand, FMC, by itself, has no power of enforcement although the Central Government may direct enforcement under the FCR Act. IRDA has limited penal powers that are not as wide as those vested in RBI and SEBI. RBI, SEBI and IRDA have the power to take action against any person who violates the rules and regulations enforced by them.
5. **WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?**

All the above regulatory authorities have powers of investigation including inspection of accounts, examining persons on oath and calling for information. In addition to the abovementioned regulatory bodies, the *Companies Act 2013* establishes a Serious Fraud Investigation Office (SFIO) to investigate frauds relating to all companies (including financial services companies). The table below sets out the powers of investigation of each body:

<table>
<thead>
<tr>
<th>POWERS</th>
<th>RBI</th>
<th>SEBI</th>
<th>IRDA</th>
<th>FMC</th>
<th>SFIO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who conducts investigations</td>
<td>RBI</td>
<td>SEBI or any person appointed by SEBI</td>
<td>IRDA or any person appointed by IRDA</td>
<td>FMC</td>
<td>SFIO, through its inspectors</td>
</tr>
<tr>
<td>Who are required to assist in investigations</td>
<td>Directors and officers of a banking company or a non-banking institution</td>
<td>Every manager, managing director, officer and employee of a company or intermediary</td>
<td>Any manager, managing director or other officer of an insurance company</td>
<td>Any person</td>
<td>All current and former officers, employees and agents of the company</td>
</tr>
<tr>
<td>Require production of records and documents</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Require a party to answer questions or provide information</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Conduct interviews</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Conduct searches at premises</td>
<td>No</td>
<td>Yes, SEBI may under certain circumstances authorise the investigating authority to conduct search and seizure of documents etc and may also authorise the investigating authority to (among others) enter and search any building, vehicle or aircraft where such information or documents are expected or believed to be kept</td>
<td>Yes, the chairperson authorises an officer to search premises for documents, etc</td>
<td>No</td>
<td>Yes, the inspectors may in certain circumstances enter premises and seize books and papers</td>
</tr>
<tr>
<td>Statutory power to compel production of evidence and/or attendance of witnesses</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
6. ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?

Generally, credit information provided by banks to RBI and information relating to non-banking financial companies contained in any statement or obtained through audit, inspection or otherwise by RBI will be treated as confidential and cannot be disclosed.

Save for the categories of permitted disclosure, employees and agents of SEBI and IRDA are required to preserve the secrecy of any information acquired by virtue of their appointment or performance of their functions.

In addition, in certain circumstances, a civil court may grant an injunction to prevent the dissemination of any confidential information.

7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCrimINATION AND LEGAL PROFESSIONAL PRIVILEGE?

The privilege against self-incrimination and the right to legal representation at interviews are not ordinarily available in investigations conducted by regulators.

8. CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

Yes, in normal circumstances such information can be used by the regulatory bodies for other purposes including in proceedings in a court of law.

9. WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?

The table below sets out the actions that RBI, SEBI, IRDA and FMC may take in the exercise of their regulatory functions:
10. WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?

If a regulatory body considers that the conduct of a corporation or an individual does not meet the standard required of them in performing their respective functions and duties in the financial services industry, the following sanctions may be imposed:

<table>
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<tr>
<th>BODIES</th>
<th>ACTIONS</th>
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| SEBI   | • Suspend the trading of any security on a recognised stock exchange  
         • Restrain persons from accessing the securities market and prohibit any person associated with the securities market to buy, sell or deal in securities  
         • Suspend any officer of any stock exchange or self-regulatory organisation from holding such position  
         • Impound and retain the proceeds or securities in respect of any transaction which is under investigation  
         • Attach one or more bank account(s) of any intermediary or any person associated with the securities market in any manner involved in violation of law  
         • Direct a person not to alienate an asset forming part of any transaction which is under investigation  
         • Prohibit/restrict any company from issuing a prospectus, offer document or advertisement soliciting money from the public for the issue of securities  
         • Issue directions to any person or any class of persons to protect the rights of investors or secure proper functioning of the securities market  
         • Issue an order to cease and desist from committing a violation of securities laws  
         • Any other appropriate direction in the interests of investors and the securities market |
| IRDA   | • Give general or specific directions to insurance companies in relation to compliance  
         • Caution or prohibit insurance companies from entering into particular transactions  
         • Remove managerial and other persons from office in insurance companies and appoint additional directors for proper management of the companies  
         • Present a petition for an insurance company to be wound up |
| FMC    | • Advise the Central Government in respect of the recognition of, or the withdrawal of recognition from, any association  
         • Forward information to the Central Government in relation to initiation of investigation and prosecution of offences |

<table>
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<tr>
<th>BODIES</th>
<th>SANCTIONS</th>
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| RBI    | • Cancellation of licence  
         • Imposition of a fine |
| SEBI   | • Suspension or cancellation of a certificate of registration  
         • Adjudication followed by levy of penalties  
         • Imposition of a fine for:  
          - contravention of rule, regulations, etc  
          - failure to pay penalty imposed  
          - failure to comply with direction/order of adjudicating officer |
| IRDA   | • Withdrawal, suspension or cancellation of registration  
         • Imposition of a fine |
| FMC    | • Suspension of membership with any recognised association or prohibition on a member from entering into any forward contract |
11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?

The Securities Laws (Amendment) Act 2014, which came into force recently, provides for settlement of administrative and civil proceedings under the SEBI Act and the SCR Act by filing a written application to SEBI. SEBI may, after taking into consideration the nature, gravity and impact of the default, agree to the settlement upon payment of money or other terms as it may determine in accordance with regulations made under the SEBI Act.

SEBI has issued the SEBI (Settlement of Administrative and Civil Proceedings) Regulations 2014 (SEBI Settlement Regulations), which set out the manner in which an application for settlement can be made, the scope of settlement proceedings and the procedure for settlement. The SEBI Settlement Regulations provide for the settlement of proceedings in connection with (among others) suspension of certificate of registrations granted to financial intermediaries, regulation of stock exchanges etc. However, certain violations, such as insider trading, fraudulent and unfair trade practices and failure to comply with takeover norms, cannot be settled under the SEBI Settlement Regulations.

Further, offences which are not punishable with imprisonment only, or are punishable with imprisonment and fine, may be compounded by the Securities Appellate Tribunal (SAT) or a court before which proceedings are pending. Under the PSS Act, RBI is also empowered to compound offences which are not punishable with imprisonment only, or are punishable with imprisonment and fine under the provisions of the PSS Act.

As mentioned under Question 4 above, FMC is not responsible for any enforcement actions and all enforcement actions are taken by the Central Government. Please note that with regard to enforcement actions taken by the Central Government in relation to the Central Government. Please note that with regard to enforcement actions taken by the Central Government in relation to unfair trade practices and failure to comply with takeover norms, cannot be settled under the SEBI Settlement Regulations.

12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?

Decisions by SEBI can be reviewed by the SAT. SAT is presided over by a retired or sitting judge of the Supreme Court of India or a retired or sitting Chief Justice of the High Court. Other members of SAT must have demonstrable experience in dealing with problems relating to the securities market and have qualifications and experience in corporate law, securities law, finance and economics. Decisions of IRDA may be appealed to the Central Government or the relevant courts.

13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (EG, INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENTION?

Securities market misconduct gives rise to various criminal offences with heavy penalties under the SEBI Act. SEBI also has the power to impose civil sanctions, including disqualifications, cease and desist orders etc, for the offence of insider trading. Misconduct in forward markets is also a criminal offence; however, the penalties imposed under the FCR Act are far less stringent than those under the SEBI Act.

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?

Statutory rights of investors can be enforced by civil remedies, including injunctions and compensation in the courts. The statutes also specifically provide for certain cases of civil liabilities. Some grievances (especially in the capital markets) can be taken up directly with the regulators.

15. DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?

Yes. The police assist the regulators in investigations of offences under the respective statutes. Most state police departments have “Economic Offences Wings” that specifically deal with offences in the financial sector.

16. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?

SEBI is actively involved in coordination with overseas regulators. It has entered into memoranda of understanding (MOUs)/letters of intent with various countries (including Hong Kong, Malaysia, Singapore and China) for mutual cooperation in the regulation of financial services markets. These MOUs enable the regulators to collect and exchange information in relation to various matters including investigations.

SEBI is a prominent member of the International Organisation of Securities Commissions (IOSCO). SEBI is also a member of various IOSCO Committees including the Technical Committee and the Emerging Markets Committee. Further, SEBI is a member of the South Asian Securities Regulators Forum.

RBI is actively involved in international banking and financial forums. RBI is a member of the Bank for International Settlements. It is also involved with the Basel Committee on Banking Supervision and the Financial Stability Forum, and is a member of the Committee on Global Financial System, the Markets Committee and the International Liaison Group under the Basel Committee on Banking Supervision. FMC has entered into MOUs with its counterparts in other countries, including China and the United States of America. At a general level, MoF coordinates with foreign government departments and regulatory authorities.

In addition, under the Prevention of Money Laundering Act 2002 (PML Act), the Central Government is empowered to enter into agreements with the government of a country outside India (Contracting State). In the event the investigating officer and the Special Court are of the opinion that evidence can be obtained from a Contracting State, a letter of request may be issued to examine facts, forward evidence to the Special Court and take such steps as the Special Court may request. When a letter of request is received from a Contracting State, the Special Court will provide assistance to that state.

17. WHICH REGULATORY BODIES ARE EMPowered TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

The Central Vigilance Commission is the principal agency responsible for inquiring into corruption and bribery offences alleged to have been committed by public servants, and incidental and connected matters. Public servants include employees of: (a) the Central Government; (b) statutory corporations; (c) government companies (ie, companies where 50% or more of the issued and
paid up share capital is held by the Central Government); and (d) societies and local authorities owned or controlled by the Central Government. The State (provincial) Governments have also established Anti Corruption Bureaux / Vigilance Commissions to investigate corruption.

The Anti Corruption Division of the Central Bureau of Investigation is responsible for the collection of intelligence in respect of corruption and enquires into complaints against Central Government employees or public servants working under the State Governments.

The Prevention of Corruption Act 1988 (PC Act) is the primary statute in relation to preventing corruption, and empowers police officers above a certain rank to conduct investigations. Under the PC Act, Central and State Governments are authorised to appoint special judges to try offences punishable under this statute. In the case of bribery of a public servant, the bribe giver (who may be employees of a corporation) will liable for a fine and imprisonment.

The PML Act is responsible for the prevention of money laundering and the Adjudicating Authority and the Directors appointed under the PML Act investigate offences of money laundering. RBI has issued “Know Your Customer” guidelines to be followed by banks and financial institutions. SEBI has issued related guidelines which must be followed by all market intermediaries, including stockbrokers, share transfer agents, merchant bankers and investment advisers. Such guidelines require market intermediaries to report suspicious transactions, maintain and retain client and transaction records etc.

The authorities appointed pursuant to the PML Act are responsible for the prevention of money laundering and the confiscation of property derived from, or involved in, money laundering. They have been given powers of survey, search, seizure, and issuing of summonses to effect arrests in the course of investigating and dealing with the offence of money laundering.

The financing of terrorism is prohibited under the Unlawful Activities (Prevention) Act 1967 (UAP Act). The UAP Act has been amended by the Unlawful Activities (Prevention) Amendment Act 2008 (UAP Amendment Act). Accordingly, raising/collecting/providing funds or attempting to provide funds, directly or indirectly, by any person (in or outside India) to/from another, knowing that the funds are likely to be used to commit a terrorist act, is a punishable offence under the statute. The actual usage of the funds in the commission of the terrorist act is immaterial. The UAP Act also declares illegal knowingly holding any property derived or obtained from the commission of any terrorist act or acquired from a terrorist fund. The holding of any proceeds of terrorism is also prohibited and the proceeds are liable to be forfeited by the Central Government. Certain state level statutes are also in force.

The UAP Amendment Act extends the definition of a terrorist act to include attacks on a public functionary and the kidnapping or abduction of a person with a view to compelling the state to do or abstain from doing any act. The UAP Amendment Act also raises the limit of detention for a terrorist accused in police custody to 6 months and makes it impossible for a foreigner who enters India illegally and is accused of terrorist activities to secure bail. Further, the UAP Amendment Act lists: (a) demanding arms and explosives for use in a terrorist act; (b) collecting and providing funds knowing that they will be used for terrorism; (c) organising training camps for terrorists; and (d) recruiting persons for the commission of a terrorist act as punishable offences.

The Central Government has also constituted the National Investigation Agency under the National Investigation Agency Act 2008 (NIA Act). The National Investigation Agency is empowered to investigate scheduled offences referred to it by the Central Government under the NIA Act. Further, the Central Government and the State Governments have been empowered to set up special courts for the trial of scheduled offences under the NIA Act.

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/ NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORIZATION APPLICATION PROCESS?

Any person applying to IRDA for a certificate of registration to carry on an insurance business is required to provide details relating to past records of regulatory interventions / restrictive directions in respect of its promoter companies. Further, the applicant is required to provide details relating to the reputation and character of its directors and key persons, including (among others) whether they have been convicted of any offences involving fraud or other dishonesty, any disciplinary action initiated against them, any litigation they have been involved in the preceding 5 years etc.

Any person applying to SEBI for a certificate to act as an intermediary is required to provide details relating to any conviction, actions taken against the applicant by regulatory authorities (including any show cause notices received from any regulatory authority), arbitration/litigation which could have a material adverse effect on the functioning of the applicant, any complaints pending against the applicant etc. Any material change in such information should be updated by the intermediary within 15 days of occurrence. Further, the applicant is required to fulfill the criteria of being a “fit and proper person”. For the purposes of determining whether the applicant is a “fit and proper person”, SEBI will consider the following (among others) in relation to the applicant, the principal officer and key management persons: (a) integrity, reputation and character; (b) absence of convictions and restraint orders; and (c) competence, including financial solvency and net worth.

Similarly, any person applying to SEBI for a certificate of initial registration as a merchant banker or certificate of registration as a portfolio manager is required to provide details of all settled and pending disputes and indictment or involvement in any economic offence by it or any of its directors or key managerial persons in the preceding 3 years. At the time of the application for a certificate of permanent registration as a merchant banker, the applicant is required to provide details of all changes in the information provided during the initial registration. Further, the merchant banker / portfolio manager is also required to disclose to SEBI any change in information previously furnished, which has a bearing on the certificate granted to it. The merchant banker / portfolio manager is also required to fulfill the criteria of being a “fit and proper person”.

In considering thegrant of a certificate of registration to a stock broker, SEBI will consider (among others) whether the applicant is a “fit and proper person”, is subject to disciplinary proceedings by a stock exchange with respect to his/her business as a stock broker involving either himself/herself or any of his/her partners, directors or employees. Similarly, in considering the eligibility for registration as a sub-broker, SEBI will consider (among others) whether the applicant is a “fit and proper person” and whether the applicant (or the applicant’s partners or directors) has been convicted of any offence involving fraud or dishonesty.
While the application process for a banking company or a non-banking financial company does not require specific disclosure to this effect, in considering an application for a licence to carry on a banking business or a business of a non-banking financial company, RBI is required to be satisfied (among other things) that the general character of the proposed management of the company will not be prejudicial to the public interest or the interest of depositors. RBI has the power to cancel a licence if at any time the aforesaid conditions are not fulfilled.

19. IS A FINANCIAL INSTITUTION IN INDIA UNDER ANY OBLIGATION TO REPORT TO THE INDIAN REGULATOR(S) ANY MISCONDUCT/ NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

Banks and non-banking financial companies are required to report to RBI all cases of fraud involving INR100,000 or above, which was perpetrated through misrepresentation, breach of trust, manipulation of books of accounts etc. Further, fraud reports should be submitted in cases where central investigating agencies have initiated criminal proceedings on their own motion and/or where RBI has directed that such cases be reported as fraud. Such reports should include details of any fraud committed by employees of the bank / non-banking financial company. Cases of attempted fraud, where the likely loss would have been INR100,000 or more (for banks) and INR2.5 million or more (for non-banking financial companies), should also be reported to RBI.

An intermediary who has been granted a certificate of registration is required to provide SEBI with a yearly certificate of compliance, certifying that the intermediary has complied with its obligations and continuous disclosure by listed companies. Similarly, the compliance officer appointed by a merchant banker / portfolio manager / stock broker is required to report to SEBI any non-compliance of laws, rules, directions etc by the institution and its employees observed by him/her.

Further, every intermediary (and its directors, officers, employees and key management personnel) and merchant banker is required to promptly inform SEBI about any action, legal proceedings etc initiated against it in respect of any material breach or non-compliance by it of any laws, rules, regulations or directions of SEBI or other regulatory authorities.

An association concerned with the regulation and control of forward contracts which is recognised by the Central Government is required to furnish an annual report to FMC containing particulars relating to (among others) any disciplinary action taken against its members and any defaults committed by its members.

20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

The Whistle Blowers Protection Act 2011 came into force on 12 May 2014. It provides a mechanism for making disclosure relating to (among other things) financial wrongdoing and corrupt activities by public servants and provides protection to persons making such disclosure. It may be noted that public sector banks and financial institutions, ie, banks and financial institutions which are owned by the government of India, are covered under this legislation and are required to frame whistle-blowing policies. With regard to private banks and foreign banks, RBI, as the regulator, has recommended that they frame whistle-blowing policies.

In the case of companies listed on a stock exchange, it may be relevant to note that SEBI, in the listing agreements entered into by listed companies and the respective stock exchange, mandates listed companies to establish whistle-blowing policies for stakeholders and employees to report to the management unethical behaviour, actual or suspected fraud or violation of the companies’ codes of conduct or ethics policies.

It is also pertinent to note that the Right to Information Act 2005 gives citizens extensive rights to demand information from any public authority including the right to inspect works, documents or records, take notes, extracts or certified copies of documents or records and take certified samples of material. Such Act is a key legislation pursuant to which citizens can access information including information regarding financial wrongdoing.

21. HOW ARE HEDGE FUNDS REGULATED?

Indian regulators have reservations about permitting overseas hedge funds in India. In the absence of any specific regulations/guidelines regulating hedge funds in India, previously most overseas hedge funds would limit their participation in the Indian markets to investment in participatory notes (or offshore derivative instruments) issued by foreign institutional investors (FIIs) registered under the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations 1995 (FII Regulations).

In January 2014, the FII Regulations were replaced by the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations 2014 (FPI Regulations). The FPI Regulations set out uniform guidelines for various categories of foreign portfolio investors like FIIs and qualified foreign investors and permit them to deal in offshore derivative instruments subject to certain conditions.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

The Insurance Laws (Amendment) Bill 2013 (Insurance Bill) has been approved by the Union Cabinet and is now pending before the Upper House of the Parliament. The Insurance Bill seeks to amend the Insurance Act 1938, the General Insurance Business (Nationalisation) Act 1972, and the IRDA Act. The amendments that have been approved by the Cabinet include:

- increasing the foreign equity cap in Indian insurance companies to 49%;
- permitting foreign reinsurer companies to open branches in India;
- setting the capital requirement for health insurance companies at INR500 million (instead of INR1 billion for general insurance companies); and
- providing for the permanent registration of insurers.

SEBI has released draft Securities and Exchange Board of India (Listing Obligations and Disclosures Requirement) Regulations 2014 to formulate a comprehensive framework for listing of equity shares, convertible and non-convertible preference shares etc. They seek to enhance SEBI’s scrutiny of compliance/enforceability of the listing obligations and continuous disclosure by listed companies.
The Report of the Financial Sector Legislative Reforms Commission has suggested the creation of a consolidated financial code for India with the establishment of a unified financial authority which will be responsible for the regulation of all financial services other than banking and payment services. The consolidated financial code prescribes that the unified financial authority will be responsible for the regulation of securities, contracts of insurance, deposits, credit arrangements, retirement benefit plans and small savings instruments and would, therefore, replace the existing regulators such as SEBI, IRDA and FMC. The Report of the Financial Sector Legislative Reforms Commission is still being considered by the government of India and no new law or regulations have yet been proposed in this regard.
1. **WHAT IS THE MAIN BODY RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN INDONESIA?**

Financial services in Indonesia are now regulated by the Financial Services Authority (Otoritas Jasa Keuangan) (OJK).

As part of a major restructuring of the laws and regulations governing financial services sectors, the Indonesian Parliament approved Law No.21 of 2011 on the Financial Services Authority (FSA Law) on 27 October 2011. Pursuant to the FSA Law:

- with effect from 31 December 2012, all authority with respect to the regulation and supervision of financial services sectors (apart from the banking sector) was transferred from the Ministry of Finance (MOF) and the Capital Markets Financial Institutions Supervisory Agency (BAPEPAM-LK) to OJK; and
- with effect from 31 December 2013, all authority with respect to the regulation and supervision of the banking sector was transferred from Bank Indonesia (BI) to OJK.

2. **WHAT DOES OJK REGULATE?**

OJK has extensive regulatory and supervisory powers in respect of entities and individuals involved in various financial services sectors, including banking, capital markets, insurance, pension funds, financing and other financial services.

In exercising its regulatory powers, OJK has, among others, the authority to:

- issue implementing regulations to the FSA Law;
- issue regulations governing financial services sectors;
- issue OJK regulations and decrees;
- issue regulations on the supervision of financial services sectors; and
- issue regulations on the imposition of sanctions in financial services sectors.

In exercising its supervisory powers, OJK has, among others, the authority to:

- determine the supervisory operational policies for financial services activities;
- supervise, examine and investigate into the activities of financial institutions, take action for the protection of customers and such other actions as may be appropriate against financial institutions and other parties and/or supporting parties to financial services activities;
- issue written orders to financial institutions and/or certain entities in relation to their activities (such as an order requiring a bank to postpone certain activities);
- determine administrative sanctions against parties violating the prevailing regulations in financial services sectors; and
- issue and/or revoke business licences, individual licences, effective registration statements, product approvals, ratifications and other decrees according to applicable laws and regulations.

All business licences that have been issued to banks, insurance companies, multifinance companies and other financial institutions by BI, MOF or BAPEPAM-LK will not be affected and will remain valid. The FSA Law does not revoke or replace pre-existing legislation governing banking and other financial services sectors, as long as the legislation does not conflict with the FSA Law and has not been replaced by OJK.

3. **WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN INDONESIA?**

Each of the financial services sectors is governed by specific legislation and regulations.

The principal legislation regulating the capital markets and securities industry is Law No.8 of 1995 on Capital Markets (Capital Markets Law). OJK also promulgates rules and regulations on specific capital markets issues and participants, including public companies, public offerings of securities, securities companies and professionals operating in the capital markets field. The Indonesia Stock Exchange (IDX), the Clearing Guarantee Corporation (PT Kliring Penjaminan Efek Indonesia) and the Central Securities Depository (PT Kustodian Sentral Efek Indonesia) also issue their own compliance rules.

The principal legislation governing the banking activities of banks operating in Indonesia is Law No.7 of 1992 on Banking as amended by Law No.10 of 1998 (Banking Law) and Law No.21 of 2008 on Sharia Banking. The banking sector is also subject to regulations issued by OJK and those previously issued by BI (which have not been revoked by OJK).

The principal legislation governing the insurance sector is Law No. 2 of 1992 on Insurance. The principal legislation governing pension funds is Law No. 11 of 1992 on Pension Funds. In addition, a
principal regulation governing the financing sector is Presidential Regulation No. 9 of 2009 on Financing Institutions. In addition to these principal legislation and regulation, the above sectors are also governed by regulations issued by MOF, which are still valid, despite the fact that the regulatory role for the above sectors has been transferred to OJK.

4. HOW BROAD ARE THE POWERS OF ENFORCEMENT OF OJK?

OJK has broad enforcement powers which enable it to take disciplinary actions against issuers, public companies, banks, insurance companies, finance companies, the IDX (including parties that conduct transactions through the IDX), securities companies, custodians, clearance and guarantee companies and capital market sector professionals.

5. WHAT POWERS OF INVESTIGATION DOES OJK HAVE?

OJK is vested with extensive powers of investigation into potential breaches of laws and regulations applicable to the financial services sectors. It may:

- receive reports, notices or statements from persons in relation to criminal acts;
- investigate the accuracy of statements or information received in relation to criminal acts;
- summon, examine (including conducting interviews) and request information and evidence from suspects and witnesses of criminal acts;
- conduct reviews of books, notes, and other documents in relation to criminal acts;
- conduct searches at places where relevant books, notes, and other documents are expected to be found and confiscate items for use in criminal cases;
- request data, documents or other evidence, whether in hardcopy or electronic copy, from operators of telecommunication services;
- in certain situations, request authorised officials to take precautionary acts or preventive measures against specific persons who/which are suspected to have engaged in criminal acts (such as prohibiting an individual from leaving Indonesia);
- request assistance from other law enforcement bodies, such as the police, Attorney General, or the court;
- request information from banks on the financial status of persons suspected to have violated prevailing laws and regulations;
- block accounts in banks or other financial institutions of persons suspected of engaging in criminal acts;
- request expert assistance in conducting investigations of criminal acts; and
- declare the commencement or discontinuation of an investigation.

The FSA Law does not expressly state the sanctions for non-compliance with OJK’s investigation requirements. However, since OJK’s investigators are vested with the powers granted by law to police investigators, failure to comply with OJK’s investigation requirements could lead to criminal sanctions.

6. ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?

Pursuant to the Capital Markets Law and the Government Regulation concerning Capital Market Formal Investigative Procedures (Government Regulation), any information disclosed to OJK officials during the course of an investigation must not be disclosed to any other person, except if authorised by OJK or otherwise required by law. The Government Regulation also empowers an OJK investigator to order persons under investigation to do or refrain from doing certain acts, including ordering them to keep any information relating to an investigation confidential.

In general, any information disclosed during an investigation must be kept confidential, unless required otherwise under the prevailing law.

7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY OJK, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCrimINATION AND LEGAL PROFESSIONAL PRIVILEGE?

Pursuant to the Government Regulation, an OJK investigator may request information or evidence from persons under investigation, enter the premises of such persons and copy records, books and other documents. A financial institution under OJK investigation must be represented by an agent or other authorised person (which may include a legal representative) when the investigation is taking place. Where a person under investigation is not represented, the investigation will be postponed. If, after postponing an investigation, the person under investigation and its agent or other authorised representative do not appear at the rescheduled time to respond to the investigation, OJK is empowered to proceed with the investigation after requiring an employee of the person under investigation to facilitate the investigation.

OJK may need to obtain a court order to conduct an investigation where it intends to enter a financial institution’s premises and inspect or seize records, books and other documents.

Indonesia does not recognise the doctrine of privilege against self-incrimination, nor is there an express doctrine of legal professional privilege attaching to documents.

8. CAN INFORMATION OBTAINED BY OJK IN THE COURSE OF ITS INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

Yes. Information obtained by OJK during the course of an investigation may be used in proceedings brought by it in a court of law, or in criminal prosecutions following the investigation.
9. WHAT ACTIONS MAY OJK TAKE IN EXERCISING ITS REGULATORY FUNCTIONS?

Set out below are the actions that OJK may take in exercising its regulatory functions under the FSA Law:

- issue implementing regulations to the FSA Law;
- issue regulations governing financial services sectors;
- issue OJK regulations and decrees;
- issue regulations on the supervision of financial services sectors;
- issue policies on the implementation of its duties;
- issue regulations on the procedure of issuing written orders to financial institutions and certain other entities;
- issue regulations on the procedure of appointment of “statutory” managers to financial institutions (“statutory” managers are individuals or legal entities appointed by OJK to implement OJK’s powers);
- determine its organisational structure and infrastructure, and manage, maintain and administer its assets and liabilities; and
- issue regulations on the procedure for imposing sanctions in accordance with the relevant laws and regulations.

10. WHAT DISCIPLINARY SANCTIONS MAY OJK IMPOSE?

If OJK considers that the conduct of a financial institution or an individual does not meet the standard required of them in performing their respective functions and duties in the financial services industry, it may impose the following sanctions:

- issue a warning letter;
- impose a fine;
- impose restrictions on business activities;
- suspend or revoke a business licence;
- cancel a registration;
- prohibit a financial institution or individual from engaging in activities in the financial services sectors or participating in financial services operations;
- require a financial institution to take internal disciplinary action against relevant employees and/or to perform any act or thing in relation to its affairs, business or property, such as improving certain business practices;
- apply for a court order for a bankruptcy declaration against a financial institution; and
- impose other sanctions as set out in the relevant laws and regulations governing the relevant financial institution.

11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY OJK?

Yes. It is possible in practice to conduct settlement negotiations with OJK to reach an agreed sanction in disciplinary cases, but not in criminal cases.

12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY OJK AGAINST THEM?

Where an investigation concerns a civil or administrative matter, and a breach of the relevant laws or regulations is found to have occurred, OJK will impose administrative sanctions. In these circumstances, an appeal against the enforcement action may be made to the highest level within the regulatory body, that is, the Chairman of OJK. In certain cases, the decision may be challenged in the Administrative Court.

Where an investigation relates to a criminal matter, and a breach of the relevant laws or regulations is found to have occurred, OJK will request that the Attorney General commences criminal proceedings in a court of law. In such circumstances, any appeal against the decision of the court may only be made to a superior court.

13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (EG, INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENTION?

Securities market misconduct, such as insider dealing and market manipulation, may give rise to administrative (civil) sanctions as well as criminal penalties. Where there are allegations of criminal misconduct, OJK may institute criminal proceedings (via the Attorney General) against those allegedly involved.

An individual or institution may be subject to both civil and criminal proceedings over the same misconduct.

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?

Under the Capital Markets Law, investors may take civil action against a person in breach of such law and/or its implementing regulations. No similar provision is available to investors under the banking, finance or insurance legislation and regulations. However, Indonesia’s general tort laws provide a right to compensation for unlawful conduct in certain circumstances. This may cover damages for breach of legislation or regulations.

15. DO THE POLICE ASSIST OJK IN INVESTIGATIONS?

Yes. In addition, the following authorities may become involved in an investigation regarding a financial services industry participant, depending on the circumstances:

- Commission for Eradication of Corruption (KPK);
- Financial Transaction Reports and Analysis Centre (PPATK); and
- Tax Office.

The authorities may share the information obtained in the course of their investigations. In practice, coordination between departments and regulatory bodies is limited. Where appropriate, the authorities may also conduct joint investigations.

16. HOW DOES OJK INTERACT WITH OVERSEAS REGULATORS?

At present, there are several memoranda of understanding or agreements for mutual cooperation which enable Indonesian and overseas regulators to collect and exchange information in relation to investigations. The FSA Law provides that OJK may cooperate with international organisations such as the International Organisation of Securities Commissions (IOSCO), International Organisation of Pension Supervisors, International Association of Insurance Supervisors and the financial supervisory and regulatory authorities of other countries. OJK is a signatory to the IOSCO’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.
17. WHICH REGULATORY BODIES ARE EMPOWERED TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

KPK is the regulatory body charged with combating corruption in Indonesia. It is an independent body, reporting ultimately to the President of Indonesia. It can conduct its own investigations, interrogations and prosecutions where corruption is alleged to have occurred.

PPATK is the regulatory body established to eradicate international organised crime such as money laundering and terrorist financing. PPATK is tasked with collecting, recording and analysing suspicious transactions occurring through banks and non-banking financial institutions.

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORIZATION APPLICATION PROCESS?

There is no reporting requirement with regards to past misconduct/non-compliance by the applicant institution during the licence application process. However, during the application process, a financial institution will be required by OJK to provide certain documentation to support the application, including, among other things, a fit and proper assessment for the proposed directors, commissioners and shareholders of the institution. This process will require the directors, commissioners and shareholders to provide a statement letter which, among other things, declares that they have never been involved in any misconduct/non-compliance and that they have not been subject to any action that has rendered them unqualified to act as directors, commissioners or shareholders of a financial institution.

19. IS A FINANCIAL INSTITUTION IN INDONESIA UNDER ANY OBLIGATION TO REPORT TO THE INDOONESIAN REGULATOR(S) ANY MISCONDUCT/NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

A financial institution (such as a commercial bank) is obliged under various regulations to report to the relevant authorities various aspects of its operations. Various reporting obligations (covering financial reports, business plan reports, bank operational reports, organisational reports, and suspicious transaction reports etc) apply to commercial banks under BI’s regulations. These reports would cover any misconduct or non-compliance by the relevant bank, its employees and its clients. Failure to comply with these reporting obligations will result in administrative sanctions as provided under the Banking Law.

20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

Generally, there are no laws or regulations with respect to individuals or entities regulated by OJK that impose obligations on them to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation.

However, pursuant to Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crime in Indonesia, financial services providers are obliged to report the following to PPATK:

- suspicious financial transactions; and
- cash transactions in the amount of IDR500 million or more (whether in Rupiah or in a foreign currency).

21. HOW ARE HEDGE FUNDS REGULATED?

OJK prescribes detailed rules regarding local investment funds generally (known as “reksadana”). However, there are currently no specific rules concerning Indonesian hedge funds. Therefore, any offering of interest in hedge funds would be subject to the general rules regarding public offering of securities.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

The Indonesian House of Representatives is currently discussing a draft law on banking (Draft Banking Law). The Draft Banking Law is intended to replace the current Banking Law, which is considered no longer able to accommodate the rapid development in the banking sector. The impact of the Draft Banking Law on the banking sector remains to be seen. The government may issue further implementing regulations under the existing laws relevant to these issues.

There is also a draft insurance law currently under consideration by the Indonesian House of Representatives.

In addition, the FSA Law is currently the subject of a judicial review at the Constitutional Court (Mahkamah Konstitusi) brought by a party known as Advocacy Team for National Economic Sovereignty (Tim Pembela Kedaulatan Ekonomi Bangsa). The claim relates to, among other things, the authority of OJK in regulating and supervising the banking sector. The claimant also questions the concentration of regulatory and supervisory power of all financial services sectors in OJK, on the basis that it would be difficult to control the decision making process, policies, and accountability of OJK. The judicial review is still at its early stages. Thus at this stage, it is difficult to tell the possible outcome of this proceeding and whether it will eventually impact the regulatory and supervisory powers of OJK in the financial services sectors. 

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JAPAN
HERBERT SMITH FREEHILLS
(Prepared in conjunction with NAGASHIMA OHNO & TSUNEMATSU)

Introduction: Recent amendments to financial regulations
The qualitative changes in the area of financial reform that have recently been introduced in Japan build on the major structural changes brought about by the Financial Instruments and Exchange Law (FIEL), implemented in stages from 30 September 2007. The legislative changes in the FIEL mean that a broader range of exchange traded funds can be issued, firewall regulations among banks, securities companies and insurance companies have been revamped and these financial groups can now participate in a broader range of businesses. New markets targeted towards professional investors have also been created.

After the implementation of the FIEL, the following amendments have been made and steps taken in response to the need to protect investors, implement “Better Regulation”, as well as to respond to the financial crisis:

- **April 2008**: Announcement of the 14 Principles as a basis for “Better Regulation”.
- **June 2008**: Promulgation of Revision to the FIEL, increasing the scope and amount of administrative surcharges.
- **June 2009**: Promulgation of Revision to the FIEL, regulating credit rating agencies, introducing the Financial Alternative Dispute Resolution System and permitting alliances between stock exchanges and commodity exchanges in Japan.
- **May 2010**: Promulgation of Revision to the FIEL, expanding the scope of institutions subject to the bankruptcy procedure petitioned by the Financial Services Agency (FSA), improving the stability and transparency of over-the-counter (OTC) derivative transactions, and introducing consolidated regulation and supervision of securities companies.
- **May 2011**: Promulgation of Revision to the FIEL, relaxing the regulation of investment advisory business targeting professional investors and allowing more flexible use of asset liquidation schemes.

- **September 2012**: Promulgation of Revision to the FIEL: (a) expanding the scope of administrative surcharges to include those who assisted the issuers of securities to file disclosure documents containing false statements, and raising the amount of administrative surcharges on the financial business firms which conducted unfair trading on account of their customers; (b) facilitating the establishment of a comprehensive exchange, in which a broad range of securities, financial derivatives and commodity derivatives are traded; and (c) improving the fairness and transparency of OTC derivative transactions.

- **June 2013**: Promulgation of Revision to the FIEL: (a) strengthening the regulation of insider trading, including the introduction of regulation on “tippers” of non-public material information and raising the amount of administrative surcharges; (b) tightening regulations on asset management businesses in response to a case involving major fraudulent activities by an asset manager; and (c) establishing an orderly resolution regime for financial institutions based on the agreement reached at the G20 Summit.

- **September 2013**: The FSA announced its new financial monitoring policy, which sets a mission of financial oversight with timely monitoring to address economic and market changes appropriately and to contribute to current economic policies designed to address deflation. Under the new policy, more focus is placed on: (a) real-time monitoring of developments within the financial sector and financial systems as well as the identification of potential risks; (b) the identification of common issues and risks across each industry and the preparation of proactive policy responses; and (c) encouraging best practices.

- **May 2014**: Promulgation of Revision to the FIEL (which is yet to come into effect) to revitalise markets, including the promotion of the use of equity crowdfunding, introduction of a new trading system for non-listed shares, reducing the burden of preparation of disclosure documents following new listings and reformation of civil liabilities of listed companies to secondary-market investors in connection with false disclosures (the current strict liability will be changed to a fault-based liability). The revisions also aim to ensure reliability of markets, such as the introduction of regulation on financial benchmarks.

As outlined above, regulation of the financial sector in Japan has been subject to significant reform in recent years. Japan, as with many other countries after the financial crisis, still seems to be in the process of establishing optimal regulation and supervision.
1. WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN JAPAN?

The main bodies are:
- FSA, which has planning, supervisory and inspection functions;
- Securities and Exchange Surveillance Committee (SESC), which is part of the FSA and works closely with its inspection function; and
- Self-regulatory organisations (SROs), such as the various Japanese securities exchanges and the Japan Securities Dealers Association (JSDA).

The FSA and the SESC are under the direction of the Commissioner of the FSA, who reports to the Ministry for Financial Services.

2. WHAT DOES EACH OF THESE BODIES REGULATE?

The FSA is an external organ of the Cabinet Office and is responsible for financial services supervision. This includes:
- maintaining the stability of the financial system in Japan, protecting depositors, insurance policy holders and securities investors;
- planning and policy making concerning financial systems;
- inspecting and supervising private-sector financial institutions (such as banks, securities companies, insurance companies and market participants, including securities exchanges);
- establishing rules for trading in securities markets;
- participating in international forums, contributing to the coordination of international financial administration policy;
- engaging in surveillance of compliance with rules governing securities markets; and
- administering financial regulations by issuing orders of revocation or suspension of licences, imposing disciplinary sanctions or ordering remedial measures.

The FSA consists of a number of organs, including the SESC and the Certified Public Accountants and Auditing Oversight Board, each of which is responsible for a particular area of financial regulation.

The SESC operates to protect investors and ensure the integrity of financial markets. It is tasked with ensuring that companies engaging in financial instrument businesses comply with the FIEL and other related regulations. The SESC is also empowered to conduct compulsory and non-compulsory inspections of entities suspected of involvement in criminal activity, such as violations of disclosure regulations, market manipulation and insider trading. Compulsory inspections, which include detailed searches of a suspect’s premises and the seizing of evidence, require the SESC to obtain a warrant from a judge. Where investigations reveal that an entity has been acting in contravention of regulations, the SESC may file a formal complaint which can lead to criminal prosecution.

SROs also play a significant part in regulating financial services in Japan. These organisations are established voluntarily and set their own regulatory framework within the remit set out by primary legislation, subject in principle to approval of the government authority with the power to oversee such organisations. Their primary aim is to ensure fairness in trading and to protect the interests of investors. For example:
- the securities exchanges regulate their member securities companies by means of rules governing the trading and settlement of listed securities, as well as rules in relation to listing conditions and procedures; and
- the JSDA regulates its member securities companies (effectively all securities companies in Japan since all are members of the JSDA) by its rules, which regulate, among other things, OTC securities transactions, solicitation of investments to customers and securities underwriting.

3. WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN JAPAN?

The three main financial industries in Japan, namely securities, banking and insurance, are each subject to a separate body of laws and regulations, although the categories are increasingly blurred as financial products are sold across boundaries.

The FIEL regulates Financial Instruments Businesses (FIBs), including securities businesses, investment management and investment advisory businesses, while banking and insurance businesses are regulated by the Banking Law and the Insurance Business Law respectively. However, sales and solicitation of financial products sold by banks or insurers that have investment characteristics are now subject to regulations under the Banking Law and the Insurance Business Law that are equivalent to those under the FIEL.

The FIEL (and the rules and regulations enacted under the FIEL) impose registration requirements on FIBs and define the scope of the business which they and their subsidiaries are permitted to undertake, depending upon the type of financial instruments business. They also require FIBs to meet a number of other obligations, including the disclosure of business results, maintenance of a certain capital adequacy ratio and compliance with regulations governing the day-to-day operation of securities companies (including securities dealings, customer relationships and the organisational structure of securities companies) for certain defined FIBs. The FIEL also regulates securities transactions, both within and outside the securities exchanges. It sets out disclosure requirements for public offerings, continuous disclosure requirements, tender offer rules, substantial shareholding reporting requirements, and anti-insider trading and market manipulation provisions.

The Banking Law regulates the banking industry and lays down requirements which must be followed by any entity seeking to engage in banking businesses. It requires banks to obtain licences before commencing operation, sets out the scope of business of banks and their subsidiaries, establishes conditions for holding shares in banks, requires banks to disclose business results, obliges banks to maintain a certain capital adequacy ratio, regulates the holding of shares of other companies by the banks and restricts the concentration of borrowers.

In addition, trust businesses operated by banks are regulated by the Concurrent Business Law. Banks are also subject to special legislation adopted in response to the demise of several financial institutions and the so-called Japanese "Big Bang" in the 1990s. These regulations were introduced to rehabililate financial institutions and stabilise financial markets. Of particular importance were amendments to the Deposit Insurance Law, the Law Concerning Emergency Measures for Stabilisation of Financial Functions and the Special Measures Law Concerning Facilitation of Reorganisation by Financial Institutions. The legislation...
introduced, amongst other measures, a mandatory injection of public funds into financial institutions, a “self-assessment” programme for banks’ assets, a prompt corrective action system and simplified procedures for certain types of reorganisation or restructuring. The Bank of Japan is also empowered to supervise, examine and carry out audits of banks pursuant to agreements with those banks for the maintenance of accounts held at the Bank of Japan.

Like the FIEL and the Banking Law, the Insurance Business Law (and the rules and regulations enacted under it) oblige companies to obtain a licence before they are permitted to commence trading in the insurance industry. The law also defines the permitted scope of business for life insurance companies, non-life insurance companies and their respective subsidiaries. Insurance companies are subject to other obligations, relating to disclosure of business results and maintenance of a certain capital adequacy ratio, as well as those governing day-to-day operations, including dealings involving insurance products, customer relationships and the organisation and structure of insurance companies.

The FSA also issues guidelines and inspection manuals under each of the FIEL, the Banking Law and the Insurance Business Law.

Consumers investing in financial products are protected by the Law Concerning Sales of Financial Products, which requires sellers of financial products to explain to their potential customers certain “important matters”, including the nature and magnitude of risks inherent in particular products. Failure to do so will expose the seller to strict liability for any resulting losses suffered by the customer.

4. **DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?**

No. The FSA has the power to investigate financial institutions’ compliance with the licensing and registration requirements under the relevant laws and regulations, and to take disciplinary measures in the event of non-compliance.

The FSA also delegates power to the SESC enabling the latter to inspect securities companies, securities exchanges and other financial instruments firms, as well as investigate insider trading, market manipulation and falsified financial statements. The SESC is empowered to file complaints for disciplinary proceedings with the FSA to enforce compliance or administrative orders, including administrative surcharges. The SESC is also empowered to file such complaints with public prosecutors, who may then investigate and indict a party for possible criminal sanctions.

By contrast, SROs, as voluntary organisations, do not have the same far-reaching powers of investigation and enforcement. Rather, they can order their members to report on any matter at issue but cannot inspect their business and therefore cannot verify the contents of the report unless the SROs have the member’s consent to conduct an inspection. Where a member has violated the laws, regulations or internal rules of the SRO, the SRO may suspend or expel that member.

5. **WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?**

The FSA and the SESC have statutory powers of inspection, including on-site inspections under the FIEL, the Banking Law and the Insurance Business Law. They have the power to require production of reports and information from the financial institutions that they regulate. An SRO’s power to request reports and information derives from its contractual relationship with its members, the basic principles of which are regulated by the FIEL and other related legislation. The table below sets out the powers of investigation exercised by these bodies:

<table>
<thead>
<tr>
<th>POWERS</th>
<th>FSA</th>
<th>SESC</th>
<th>SROS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who conducts investigations</td>
<td>FSA staff</td>
<td>SESC staff</td>
<td>The SRO’s staff</td>
</tr>
<tr>
<td>Who are required to assist in investigations</td>
<td>Regulated financial institutions such as banks and insurance companies</td>
<td>Financial business firms and any person under suspicion of having violated the FIEL</td>
<td>Member companies and listed companies in the case of securities exchanges</td>
</tr>
<tr>
<td>Require production of records and documents</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, based on the SRO’s contractual relationship with members</td>
</tr>
<tr>
<td>Require a party to answer questions or provide information</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, based on the SRO’s contractual relationship with members</td>
</tr>
<tr>
<td>Conduct interviews</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, based on the SRO’s contractual relationship with members</td>
</tr>
<tr>
<td>Conduct searches at premises</td>
<td>Yes, when a warrant has been obtained</td>
<td>Not without consent</td>
<td></td>
</tr>
<tr>
<td>POWERS</td>
<td>FSA</td>
<td>SESC</td>
<td>SROS</td>
</tr>
<tr>
<td>--------</td>
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</tr>
<tr>
<td>Statutory power to compel production of evidence and/or attendance of witnesses</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Consequences of non-compliance with the above investigation requirements

<table>
<thead>
<tr>
<th>FSA</th>
<th>SESC</th>
<th>SROS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal penalty (a fine or imprisonment) and/or an administrative sanction</td>
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<td>Suspension or expulsion from the SRO</td>
</tr>
</tbody>
</table>

6. **ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?**

The FSA, the SESC, SROs and their officers and employees are required to keep any information obtained through investigations of financial institutions confidential. Breach of this duty amounts to a criminal offence.

There are no specific legal provisions requiring financial institutions to keep any information disclosed during the course of investigations confidential. However, in practice, the FSA, the SESC and SROs require financial institutions and individuals under investigation to keep any information they provide for the purpose of the investigations confidential.

7. **ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCrimINATION AND LEGAL PROFESSIONAL PRIVILEGE?**

In general, there is no right to legal representation at interviews. In practice, a demand to have legal representation at interviews tends to be viewed by regulatory bodies as an indication that wrongdoing has occurred.

Both the right to remain silent and privilege against self-incrimination are available. Any information provided without claiming this privilege may be used in any proceedings brought as a result of the investigation. In addition, the right will not prevent disciplinary action being brought against financial institutions where their employees have claimed the right.

No attorney-client privilege is available in relation to an investigation.

8. **CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?**

Information obtained by the SESC or SROs can be supplied to the FSA. Each regulatory body may also provide information to the public prosecutors for the purpose of bringing criminal charges against financial institutions and individuals or to instigate criminal investigations.

Each regulatory body, and its officers and employees, can be required pursuant to a warrant issued by the court, or a court order issued for the purpose of criminal or civil court proceedings, to provide information obtained through their investigations of financial institutions and individuals to the police or the public prosecutor.

9. **WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?**

The FSA is entitled to bring disciplinary proceedings against any individual or entity which is subject to its regulation and has contravened the FIEL and other related laws or regulations. The FSA has the power to issue administrative orders, such as suspension of business or business improvement orders. The FSA is also empowered to impose administrative surcharges in cases where an entity’s violation consists of a failure to meet disclosure obligations, involvement in market manipulation or related activities, a failure to file a formal complaint with the public prosecutor’s office where criminal proceedings should be brought, or to apply for a court order to restrain or prohibit activities in violation of regulations.

In addition, the FSA is empowered to take a variety of measures for the rehabilitation, reorganisation or liquidation of troubled financial institutions, such as banks, including ordering an injection of public funds or even taking over the administration of the relevant institution.

The SESC may file a formal complaint with the public prosecutor’s office to initiate criminal proceedings and make recommendations to the FSA as to disciplinary actions to be taken.

SROs may commence internal disciplinary proceedings against their member financial institutions, or, in the case of securities exchanges, may suspend or delist offending members’ securities from the market.
10. WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?

If a regulatory body considers that the conduct of a corporation or an individual is in violation of the rules and regulations, or fails to meet the standard required in performing their duties and functions, the following sanctions may be imposed:

- **FSA**
  - Revoke or suspend a licence, registration or authorisation
  - Issue a public or private reprimand
  - Impose administrative surcharges
  - Prohibit a corporation or an individual from engaging in activities in the particular financial industry or market
  - File a formal complaint with the public prosecutor’s office for a criminal offence

- **SESC**
  - Recommend that the FSA takes disciplinary action
  - File a formal complaint with the public prosecutor’s office for a criminal offence

- **SROs**
  - Suspend or expel a member from the organisation
  - Impose financial penalties
  - Suspend or delist securities (in the case of the securities exchanges)

The SESC publishes a list in an anonymised form on its website of suspect actions or minor breaches of regulations that were uncovered during inspections, as a form of official guidance (known as “shiteki”). The list is seen as a means to improve practice at the offending institution and across the industry by example, without the need for formal disciplinary sanctions.

11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?

It is not possible to enter into a settlement to resolve any enforcement actions taken by any of the regulatory bodies.

The regulatory bodies are required by law to grant financial institutions subject to enforcement actions the opportunity of an official hearing. Supervisory guidelines provide that prior to this hearing, financial institutions should be given an opportunity to exchange views and opinions with the FSA.

It should be noted that, as a practical matter, the FSA does not always impose sanctions on institutions which have confessed to regulatory breaches (particularly of the “honest mistake” variety) and which have shown a willingness to take or have taken appropriate steps to rectify the breach before contacting the FSA. Such rewards for responsible self-regulation cannot be guaranteed in advance, but can, in effect, amount to a settlement action. It can be said that the FSA generally rewards openness and virtues that are evidence of honest and responsive management.

12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?

Financial institutions or their employees may appeal to the relevant governmental agency or body for a review of the legality or appropriateness of such enforcement actions. They may also appeal to the court to cancel any government actions taken in violation of the relevant laws and regulations.

SROs do not have a system of review of enforcement actions. However, judicial review of SROs’ decisions is available to aggrieved parties.

13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (EG, INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENATION?

Under the FIEL, insider dealing, market manipulation and other market misconduct all constitute criminal offences. Individuals convicted of market manipulation with a view to obtaining a profit may receive up to 10 years’ imprisonment and/or a criminal fine of up to ¥10 million. Those convicted of engaging in insider dealing may be subject to up to 5 years’ imprisonment and/or a criminal fine of up to ¥5 million. In addition, the company on behalf of which an individual had engaged in insider dealing, market manipulation or other market misconduct may be subject to a criminal fine of up to ¥500 million upon conviction.

Amendments to the Securities and Exchange Law in 2004, which have now been superseded by the FIEL, created a new penalty - an "administrative surcharge" - which was aimed at, among others, combating fraudulent disclosure, market manipulation and insider dealing. The basis for calculating this penalty is the economic benefit obtained by a party from its contravention of the law. The FSA is empowered to bring proceedings in order to impose this administrative surcharge. The SESC and the FSA are becoming more active in imposing administrative surcharges on insider dealing, market manipulation and fraudulent disclosure and have increased the amount of administrative surcharges imposed or broadened the scope of misconduct subject to administrative surcharges in 2008, 2012 and 2013.

A person can be subject to both a criminal prosecution and an administrative proceeding, although the amount of administrative surcharge will be adjusted to reflect the amount of criminal fine, if any.

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?

Market manipulation is subject to a special civil action under which the person convicted is liable to all investors who purchased securities at the manipulated price created by that person’s behaviour, and who have suffered a loss as a result. There is no special civil action in relation to insider dealing, although a claim in tort under the Civil Code may be made. Under the FIEL however, directors, executive officers, corporate auditors and principal shareholders of a company may be obliged to account for any profits they have acquired within 6 months of the violation in question to the company.

An investor who acquires securities through a public offering may claim damages from the issuer and/or the underwriters where the prospectus or other offer documents contained false information or
were misleading and where the investor invested in ignorance of this fact. An investor who acquires securities based on information disclosed by the issuer under the continuous disclosure requirements in the FIEL may also claim damages from the issuer where such disclosure contained false information or were misleading and where the investor invested in ignorance of such fact.

Under the revision to the FIEL in 2014, which is scheduled to come into effect by 30 May 2015, the civil remedies on secondary trading of securities will be reformed to: (a) broaden the claimants to not only the acquirer but the seller of the securities; and (b) lessen the burden of the issuer to require fault on its part, which means that an investor who acquires or disposes of securities through the market may claim damages from the issuer where the issuer’s disclosure contained false or misleading information and where there is fault on the part of the issuer on such disclosure (the burden of proof of no fault will be on the issuer).

Under the Law Concerning Sales of Financial Products, investors who purchased financial products from those who engage in financial products sales business may claim damages from those who solicited the trade on the basis that the latter did not disclose material matters as stipulated under the law, or solicited the trade by making exaggerated claims in respect of the investment.

15. DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?

The police do not generally assist these regulatory bodies in the course of their investigations. However, they may assist in investigations carried out by the public prosecutor’s office when that office considers it necessary to investigate cases filed by the FSA or the SESC with a view to commencing criminal prosecution, such as cases involving fraud.

16. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?

The FSA aims to achieve close co-operation with overseas financial supervisory authorities and to promote the exchange of information in order to properly respond to the increasing internationalisation of finance and financial services. The FSA’s international activities include sharing information concerning the regulation and monitoring of money laundering, and contributing to the formulation of international rules for financial supervision through the Basel Committee on Banking Supervision, the International Organisation of Securities Commissions and the International Association of Insurance Supervisors.

It is an explicit goal of the FSA’s policy of “Better Regulation” to increase the contacts that it has with overseas regulatory authorities and to facilitate joint investigations if it is required to deal with a current regulatory issue of international significance.

The FSA has joined the cross-border “colleges” of regulators established by major G20 regulators that aim to provide global and coordinated regulatory oversight of major global financial firms that operate across jurisdictions in an effort to reduce systemic risks.

In addition, under the new financial monitoring policy announced in September 2013, the FSA emphasises its focus on enhanced cooperation with foreign counterparty supervisors for the oversight of foreign institutions (in particular, global systemically important financial institutions), including bilateral and multilateral communications on particular firms.

17. WHICH REGULATORY BODIES ARE EMPOWERED TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

The FSA and the SESC, as well as the public prosecutor office, has the power to investigate and combat corruption, money laundering and terrorism financing. The FSA, which regulates almost all financial institutions, has the most important responsibility for combating such activities by financial institutions, and co-operates with the public prosecutors and the police in criminal investigations of such activities.

More specifically, in April 2007, pursuant to the Act on the Prevention of Transfer of Criminal Proceeds (2007), the Japanese Financial Intelligence Unit (then called the Japan Financial Intelligence Office) was transferred from the FSA to the National Police Agency and became the Japan Financial Intelligence Centre (JAFIC). The JAFIC receives Suspicious Transaction Reports from various financial institutions and certain designated individuals which it analyses and then passes on to law enforcement agencies, including the police, public prosecutors and the SESC.

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/ NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORIZATION APPLICATION PROCESS?

A corporation will not be permitted to obtain a licence or registration to operate any securities or other business under the FIEL or other financial business regulations if, within the previous 5 years:

- it had been convicted of a criminal offence;
- its licence or registration had been revoked;
- its manager(s) had been under imprisonment due to a criminal offence; or
- its manager(s) had worked at another corporation, and that other corporation’s licence or registration had been revoked.

A corporation applying for a licence or registration is required to confirm at the time of the application that none of the above applies to it.

In addition, if the FSA finds that the management of the corporation is not suitable for the relevant regulated business, it has a discretion not to issue a licence or registration to the corporation. In the process of investigating an applicant’s suitability, the FSA may request the applicant to confirm or provide relevant information, including information about any past misconduct/non-compliance.
19. IS A FINANCIAL INSTITUTION IN JAPAN UNDER ANY OBLIGATION TO REPORT TO THE JAPANESE REGULATOR(S) ANY MISCONDUCT/ NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

The FSA may issue an order to any licensed or registered financial business firm, its subsidiaries and principal shareholders requiring them to make a report or submit materials on the business or its assets, when the FSA considers it necessary and appropriate. Although there is no express provision which requires financial business firms to report their misconduct/non-compliance with rules and regulations, except where an order has been issued by the FSA as described above, firms in general tend to make voluntary reports on such issues in order to mitigate the risk of sanctions in relation to such misconduct/non-compliance.

20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

“Whistle-blowing” obligations are imposed on financial institutions and certain other institutions, as well as specified individuals, under the Law for the Prevention of Transfer of Criminal Proceeds and other laws and regulations. Public officials also have an obligation to report criminal offences which they become aware of during the course of their duties.

Each financial institution subject to these “whistle-blowing” obligations must file a report in a prescribed form with the relevant regulatory bodies when it or its officers or employees suspect that any property received during the course of a transaction represents the proceeds of a criminal activity. Financial institutions are also required to confirm the identity of customers and keep records of such confirmation.

Any financial institution which fails to maintain proper internal systems for the purpose of reporting suspect transactions, or fails to report such transactions, may be subject to an improvement order or other administrative sanctions.

21. HOW ARE HEDGE FUNDS REGULATED?

Hedge funds are generally classified as securities under the FiEL, although it would depend upon the exact structure of the fund in question. Hedge funds classified as FIBs may therefore be marketed and distributed to relevant classes of investors under the same regulatory regime that applies to other FIBs. This includes local Japanese registration and reporting requirements, unless exemption from such requirements is available. To market such hedge funds in Japan as an underwriter, a broker-dealer or otherwise through “self-solicitation” generally requires registration as the relevant type of FIB.

However, it should be noted that where the sale of a hedge fund is conducted directly from overseas without any marketing activities having been carried out in Japan or toward Japanese investors, a foreign broker-dealer authorised overseas but not in Japan may sell that hedge fund to certain institutional investors in Japan.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

As mentioned in the introduction, revisions to the FiEL were promulgated in May 2014 to revitalise markets, including the promotion of the use of equity crowdfunding, introduction of a new trading system for non-listed shares, reducing the burden of preparation of disclosure documents following new listings and reformation of civil liabilities of listed companies to secondary-market investors in connection with false disclosures (the current strict liability will be changed to a fault-based liability). The revisions also aim to ensure reliability of markets, such as the introduction of regulation on financial benchmarks. The changes will take effect within one year of promulgation, ie, by 30 May 2015.
**KOREA**

**YULCHON LLC**

1. **WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN KOREA?**

The main bodies are:

- Financial Services Commission (FSC);
- Securities and Futures Commission (SFC); and
- Financial Supervisory Service (FSS).

The following bodies have limited responsibilities:

- Bank of Korea (BOK); and
- Korea Deposit Insurance Corporation (KDIC).

2. **WHAT DOES EACH OF THESE BODIES REGULATE?**

**FSC and SFC**

The FSC is the central government body in charge of financial policies and market oversight in the securities, futures, banking and insurance markets. It supervises financial institutions and has the power to investigate unlawful market conduct.

The SFC is a sub-committee of the FSC that oversees the securities and futures market. It has authority to investigate or seek prosecution of unfair market transactions, including insider trading and price manipulation. It is also in charge of establishing accounting standards and audit reviews. In addition, the SFC reviews matters particular to the securities and futures market as directed by the FSC.

**FSS**

The FSS was founded as the FSC’s implementation agency and principally supervises and carries out examinations of regulated financial institutions, along with enforcement and other oversight activities as directed or charged by the FSC (including the SFC).

**BOK**

The BOK is responsible for monetary and credit policies as well as the operation and management of payment systems. It may conduct joint examinations of financial institutions with the FSS. The BOK may also request financial institutions to submit documents directly to it and the financial institutions may not refuse to comply with such request without any justifiable reason.

**KDIC**

The KDIC was established to operate the deposit insurance system and resolve insolvent financial institutions. It may conduct its own examination or joint examination with the FSS of a financial institution. The KDIC may independently request financial institutions to submit documents to it.

3. **WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN KOREA?**

The principal legislation regulating the financial services industry are the Financial Investment Services and Capital Markets Act (FSCMA), the Banking Act and the Insurance Business Act.

The FSCMA governs entry and business activities in the securities and futures market. It consolidates former laws and regulations governing the general financial industry in Korea, including: (a) the former Securities and Exchange Act regulating securities companies; (b) the former Futures Trading Act regulating futures companies; and (c) the former Trust Business Act regulating asset management companies, investment advisory companies and discretionary investment companies. The FSCMA also prescribes disclosure requirements when a company issues financial investment instruments, and supervises the functions and roles of self-regulatory entities, including the Korea Exchange.

The Act on the Establishment, Etc of Financial Services Commission regulates fairness of financial transactions and promotes investor protection through the establishment of the FSC and FSS.

4. **DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?**

No. While the FSS and the FSC are intricately related in many ways, the scope of their enforcement powers is significantly different. The FSC has general enforcement powers over financial institutions in Korea. The FSS, as an implementation agency of the FSC, has authority to examine and inspect financial institutions by requesting relevant documents and records or hearing personal testimony necessary for an investigation. It may, subject to the approval of the FSC, recommend dismissal of officers and managers of financial institutions who have violated rules and regulations. The FSS also serves as a mediator of disputes between financial institutions on the one hand and investors, depositors and creditors on the other.
The BOK, the KDIC and the SFC all have limited powers of enforcement. The BOK may jointly examine a financial institution with the FSS or have its employees participate in such examination. The KDIC regulates financial activities related to the operation of the deposit insurance system. The SFC regulates matters relating to the securities and futures market to the extent delegated by the FSC.

5. **WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?**

<table>
<thead>
<tr>
<th>POWERS</th>
<th>FSC (INCLUDING SFC)</th>
<th>FSS</th>
<th>BOK</th>
<th>KDIC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who conducts investigations</td>
<td>Investigations by the FSC are delegated to the FSS and the SFC, but the FSC may conduct investigations of certain types of financial institutions directly</td>
<td>FSS</td>
<td>Joint investigations with the FSS</td>
<td>KDIC for its investigations on insolvent financial institutions; or joint investigations with the FSS</td>
</tr>
<tr>
<td>Who are required to assist in investigations</td>
<td>Subject of the investigation (eg, a licensed financial institution and its officers, employees, external auditor and largest shareholders)</td>
<td>Subject of the investigation (eg, a licensed financial institution and its officers, employees, external auditor and largest shareholders)</td>
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</tr>
<tr>
<td></td>
<td>In an investigation of an unfair transaction of securities (eg, market manipulation or insider trading), any person who is suspected of being involved in such transaction will be subject to the investigation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Require production of records and documents</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Require a party to answer questions or provide information</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Conduct interviews</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Conduct searches at premises</td>
<td>No, except for the FSC’s direct investigation of certain types of financial institutions</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Statutory power to compel production of evidence and/or attendance of witnesses</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
6. ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?

Article 6(2) of the Regulation on Investigations and Sanctions against Financial Institutions prohibits FSS officers and employees from disclosing confidential information acquired through the performance of their functions, to any other person or for purposes beyond the scope of the investigation.

Article 35 of the Act on the Establishment, Etc of Financial Services Commission also prohibits FSS officers and employees from using or disclosing information obtained in the course of their investigations for purposes beyond the scope of the investigation.

Officers and employees of the BOK and the KDIC are subject to an obligation of confidentiality under the Bank of Korea Act and the Depositor Protection Act respectively, while the State Public Officials Act is applicable to the officers and employees of the FSC and the SFC in respect of their obligation of confidentiality.

7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCrimINATION AND LEGAL PROFESSIONAL PRIVILEGE?

Under the Regulations on the Investigations and Sanctions against Financial Institutions, financial institutions and their officers and employees may be assisted by legal counsel (or any person who has expertise and is designated as advisor by the Governor of the FSS) during examinations or investigations by the FSC, the SFC and the FSS, in drafting responses to investigation inquiries or confirmation letters. They are, however, not entitled to be accompanied by legal counsel at interviews conducted by such bodies.

There are legislative provisions providing for legal professional privilege and the privilege against self-incrimination in the context of criminal investigations. However, no such provisions exist in relation to investigations by regulatory bodies.

8. CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

Any information obtained by the FSC, the SFC and the FSS during investigations or examinations may be used in court proceedings at the specific request of the court.

Furthermore, the Board of Audit and Inspection of Korea and the National Assembly of the Republic of Korea may request information that the regulatory bodies acquired during their financial regulatory activities. The requested information may be used in audits by the Board of Audit and Inspection and the National Assembly.
9. WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?

<table>
<thead>
<tr>
<th>BODIES</th>
<th>ACTIONS</th>
</tr>
</thead>
</table>
| FSC    | ▪ Oversee investigations of financial institutions by the FSS or the SFC  
▪Delegate its investigation authority to the FSS |
| SFC    | ▪ Request the FSS to investigate securities and futures market transactions |
| FSS    | ▪ Request statements regarding facts and circumstances in respect of its investigations  
▪Demand attendance at interviews  
▪Demand data and transaction information  
▪Request books, documents and other materials in respect of its investigations  
▪Investigate books, documents and other materials through direct access to related businesses or involved persons |
| BOK    | ▪ Investigate transactions in respect of monetary and foreign currency exchange |
| KDIC   | ▪ Conduct its own investigations on insolvent financial institutions  
▪Request examinations or conduct joint examinations with the FSS in respect of matters related to the deposit insurance system |

10. WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?

The FSC, the SFC and the FSS may impose various administrative sanctions against a financial institution for failing to comply with the applicable laws and regulations, such as:
▪ cancellation of business authorisation, licence or registration;  
▪ transfer of business or contracts related to financial transactions, such as deposits or loans, to other financial institutions;  
▪ closure of a branch or business offices or suspension of all or part of the business;  
▪ warning or caution against a financial institution;  
▪ demands for the dismissal or suspension of officers;  
▪ warning or caution against an officer/employee;  
▪ demands for restitution or correction;  
▪ public announcement of illegal activities;  
▪ administrative fines; and  
▪ notice or filing of a criminal report to the law enforcement agencies.

11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?

The applicable laws and regulations do not expressly prescribe any settlement procedures. There is also no reference to settlement under the investigatory or examination procedures applicable to the regulatory bodies. However, a financial institution may comment or discuss the issues with the FSC, the SFC and the FSS before final sanctions are imposed against it. In particular, a financial institution or a director, officer or employee of such financial institution may attend before and provide its/his/her opinion to the Sanctions Committee and/or Committee for Deliberation on Investigations of Capital Markets before final sanctions are imposed against it/him/her by the FSC, the SFC and the FSS.

12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?

Sanctions imposed by the FSC, the SFC and the FSS may be challenged in a court or the Administrative Judgment Tribunal under the Administrative Appeals Act. A decision by the Administration Court may be appealed to the High Courts and may even be taken to the Supreme Court of Korea.

13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (E.G., INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENION?

Under the FSCMA, unfair transactions, insider trading and market manipulation are subject to criminal penalties, including imprisonment or monetary fines, and failure to comply with public disclosure requirements will give rise to administrative fines. Recent trends have shown that the courts are prepared to order more severe punishments for financial market misconduct than in the past.

Whilst the regulatory agencies only have authority to conduct administrative proceedings, they may notify the Prosecutors’ Office of any suspected market misconduct and provide relevant evidence for potential criminal action.

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?

The FSS provides a mechanism to mediate disputes that arise from financial transactions between investors and financial institutions. An investor who has been harmed by illegal financial market transactions may request mediation, whereupon the FSS will examine the facts concerning the dispute and present its proposal for settlement to the relevant parties. In the event that the parties agree to the FSS proposal, the proposal becomes binding.
As an alternative, investors may claim damages in civil court actions.

In relation to market manipulation, a person who traded or conducted transactions with respect to the securities at a price resulting from the market manipulation and has incurred a loss as a result may seek compensation by filing a civil action.

In the case of insider trading or market manipulation, investors may file class actions under the Securities-related Class Action Act.

15. DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?

No. However, in the event of a referral or criminal accusation by a regulatory body to the Prosecutors’ Office, the prosecution may either investigate independently or delegate its investigatory powers to the police.

16. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?

The FSC and the FSS have entered into Memoranda of Understanding with 42 countries including United Kingdom, Japan, Germany, Vietnam, France, China, Indonesia, Thailand, and Malaysia. The FSC and the FSS exchange information with the regulatory bodies from these jurisdictions in respect of investigations, enforcement and the imposition of sanctions.

Korea is also a member of International Organisation of Securities Commissions, Basel Committee on Banking Supervision and International Association of Insurance Supervisors.

17. WHICH REGULATORY BODIES ARE EMPOWERED TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

The Korea Financial Intelligence Unit (KoFlU) is the primary agency responsible for implementing the regime for anti-money laundering and combating of the financing of terrorism (AML/CFT) in Korea. The KoFlU is responsible for collecting and analysing suspicious transaction reports and currency transaction reports filed by financial institutions, as well as supervising and overseeing financial institutions’ compliance with their AML/CFT obligations.

In the event that the KoFlU is suspicious of certain financial transactions on the basis of the information it has collected, it may provide such information to the relevant law enforcement agencies in Korea, such as the Prosecutors’ Office, National Tax Agency, Korean Customs Service, National Election Commission and the FSS. The law enforcement agencies may conduct their own investigations, and if the investigations reveal any misconduct by financial institutions, they may impose sanctions against such financial institutions.

The Anti-Corruption and Civil Rights Commission was established under the Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission. The Commission has a duty to: (a) establish policies to prevent corruption; (b) create a reporting channel for corrupt activities; (c) protect the rights of informants; (d) provide compensation to informants; and (e) assist in activities that prevent corruption. The Act only applies to public officials but not the general public, who are instead subject to the anti-bribery provisions under the Criminal Act, the Act on the Aggravated Punishment, Etc of Specific Crimes, and the Act on the Aggravated Punishment, Etc of Specific Economic Crimes. The Prosecutors’ Office is the primary agency responsible for investigations and criminal actions against corruption.

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/ NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORISATION APPLICATION PROCESS?

The FSC and the FSS review the integrity of incorporators and the management of financial institutions through the “fit and proper” test and may not grant a licence/authorisation unless they satisfy the relevant requirements.

For example, a person who has been sentenced to certain punishments for violation of finance-related laws, whether domestic or foreign, may not serve as a member of the board of directors of a bank, if fewer than 5 years have lapsed since the sentence was completed, or since the court has declared a decision to revoke the sentence.

For a financial institution to obtain a licence/authorisation, the institution and its controlling shareholders shall not have received any administrative or criminal sanctions from any financial regulatory body in Korea or in its country of incorporation for a given period (usually between 3 to 5 years).

19. IS A FINANCIAL INSTITUTION IN KOREA UNDER ANY OBLIGATION TO REPORT TO THE KOREAN REGULATOR(S) ANY MISCONDUCT/ NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

A financial institution in Korea is in principle under no such obligation, provided, however, that if the embezzlement or negligence of its officer or employee has led to financial losses to the financial institution, the institution will be under an obligation to report the incident to the FSS.

20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

While there is no law or regulation in Korea that imposes an obligation or duty to whistle-blow, the FSCMA provides protection for whistle-blowers. If a person who is aware of unlawful conduct under the FSCMA reports to the FSC, the FSC shall keep the identity of the informer confidential. The organisation to which the informer belongs may not discriminate against the informer. On the other hand, the FSS may also compensate the informer of an unfair transaction in the securities market for up to KRW2 billion. However, in practice, it is rare that an investigation is initiated based on information provided by a whistle-blower.

21. HOW ARE HEDGE FUNDS REGULATED?

Entry regulations are the most important regulations imposed on hedge fund management firms. In order to obtain the necessary licence, hedge fund management firms are required to meet, among others, the following criteria: (a) equity in the amount of KRW6 billion; (b) controlling shareholders that meet specified qualifications; (c) fund managers who meet specified
qualifications, necessary data processing facilities and a reasonable business plan; and (d) assets under management in the amount of at least USD1 billion, where their largest shareholder is a foreign hedge fund management firm.

Hedge fund management firms are also required to set guidelines for internal control over hedge fund management, including work manuals for officers and employees, and to designate persons in charge of internal control matters.

The FSC regulates hedge funds under the Regulations on Financial Investment Business, which provide mechanisms to prevent conflict of interests and set out criteria that must be met by hedge fund management firms and professionals. Hedge fund management firms must also report periodically to the FSC information regarding operations and risk assessment, and submit additional reports whenever required by the FSC or the FSS.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

The Act on the Governance of Financial Institutions has been proposed and is currently under review. The proposed legislation aims to address various issues, including:

- creating a unified governance scheme across various financial institutions;
- strengthening the independence and expertise of outside directors;
- strengthening the surveillance of management by the audit committee;
- improving the restrictions regarding officers’ qualifications;
- enforcing mandatory internal governance;
- improving internal controls;
- improving risk management and remuneration system; and
- regulating large shareholders’ qualifications.

In order to protect the consumers of financial products, there have been discussions on the promulgation of the Financial Product Consumer Protection Act, including the discussion of whether a separate legal entity is to be established from the FSS to regulate the protection of such consumers’ interests.

In connection with a privately placed fund (PPF), there have been discussions on the improvement of the regulations, including, among others:

- simplifying the categorisation of PPF into 2 types: professional investment type (hedge fund) and management-participating type (private equity fund);
- allowing only qualified investors (institutional investors or individual investors who invest no less than KRW500 million) to invest in a PPF;
- easing the entry regulations applicable to a PPF manager from an approval system to a registration system;
- easing the regulations over a PPF from an advance approval system to an ex post factor approval system; and
- widely expanding the autonomy of a PPF by easing the regulations on asset management.

In connection with the leakage of credit information and personal information, there have been discussions on the following regulations:

- strengthening step-by-step protection of consumers, such as collection, possession, utilisation and destruction of personal information, and the responsibility of financial institutions;
- strengthening the responsibility of CEOs, introducing a punitive fines system and strengthening the penal and administrative sanctions imposed in the event of leakage of personal information;
- strengthening regulations on security, such as encryption of customer ID; and
- strengthening the financial consumer’s right to determine how his/her personal information is to be used by a financial institution, for example, the right to prohibit the financial institution from using his/her personal information for marketing purposes.
1. WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN MACAU?

The main regulators are:
- MSAR Chief Executive (Chefe do Executivo da RAEM) (Chief Executive); and
- Monetary Authority of Macau (Autoridade Monetária de Macau) (AMCM).

2. WHAT DOES EACH OF THESE BODIES REGULATE?

The regulation of financial services in Macau is highly centralised, with the Chief Executive and the AMCM both responsible for regulating the financial and foreign exchange markets, as well as insurance activities and businesses conducted by authorised institutions.

The AMCM acts under the Chief Executive’s co-ordination as the executive body responsible for formulating policies on monetary, financial, exchange rate and insurance matters, as well as for the supervision and inspection of the financial markets and their players.

The Chief Executive is responsible for establishing financial policies and for issuing authorisation (on prior advice from the AMCM) for the incorporation of credit and insurance institutions and their local branches, subsidiaries and representative offices. The AMCM retains front-line regulatory supervision over the operations and personnel of authorised institutions, in order to ensure compliance with relevant legal requirements, the adoption of correct standards of ethical business practices and the suppression of all practices incompatible with the clear and proper operation of the markets.

The AMCM also performs the role of a central bank (in accordance with the policies established by the Chief Executive), acting as a central depository and manager of foreign exchange reserves, and providing the internal monetary stability and the external solvency of the local currency, Macau Pataca (MOP). It is also the lender of last resort.

3. WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN MACAU?

The primary legislation regulating the financial services industry is the Macau Financial System Act (Regime Jurídico do Sistema Financeiro) (Decree-Law no. 32/93/M).

Financial services companies, establishments and activities must comply with the Financial Companies Act (Regime Jurídico das Sociedades Financeiras) (Decree-Law no. 15/83/M) (RJSF). Offshore financial activities are regulated by Decree-Law no. 58/99/M.

The AMCM also establishes guidelines, issues technical instructions and lays down regulations and regulatory instructions. These regulations are binding and must be complied with.

The main piece of legislation regulating the insurance industry is the Macau Insurance Ordinance (Decree-Law no. 27/97/M), together with the Insurance Agents and Brokers Ordinance (Decree-Law no. 38/89/M) and several other ordinances and regulations on compulsory insurance.

Futures and securities exchange companies and activities are also regulated under the RJSF.

Venture capital companies are regulated by Decree-Law no. 54/95/M and cash remittance companies by Decree-Law no. 15/97/M. The foreign exchange regime is governed by Decree-Law no. 39/97/M.

All financial rules and regulations can be found, in both English and Portuguese, at www.amcm.gov.mo/rules_and_guidelines/rules.htm.

4. DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?

The AMCM does not have the power to impose penalties or sanctions on financial institutions. It only has statutory powers of investigation.

In the exercise of its investigatory functions, and if faced with signs of illegal activity, the AMCM can institute proceedings for suspected violations of the legislation and regulations governing credit, banking, foreign exchange and insurance activities, as well as for any misconduct which disturbs the regular operation of the markets.
Nevertheless, the Chief Executive has sole and exclusive authority to take disciplinary action against infringing institutions, following investigation and/or commencement of proceedings by the AMCM. On the prior recommendation of the AMCM, the Chief Executive may impose appropriate sanctions or implement extraordinary or intervention measures provided under the relevant legislation and regulations.

5. WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?

The AMCM is the only body that has statutory powers of investigation under the Rules of Monetary and Foreign Exchange Authority of Macau (Estatuto da Autoridade Monetária e Cambial de Macau) (Decree-Law no. 14/96/M) (AMCM Rules) and the RJSF. When duly identified for the purpose of exercising inspection and supervision powers, the AMCM has the same status as a public authority.

<table>
<thead>
<tr>
<th>POWERS</th>
<th>AMCM</th>
</tr>
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<tr>
<td>Conduct searches at premises</td>
<td>Yes – the AMCM may enter premises without a search warrant, with or without prior notice, to confiscate any documents or assets which are considered to be the subject of an offence or which are deemed necessary to further the corresponding legal proceedings</td>
</tr>
<tr>
<td>Statutory power to compel production of evidence and/or attendance of witnesses</td>
<td>Yes</td>
</tr>
<tr>
<td>Consequences of non-compliance with the above investigation requirements</td>
<td>Contraventional offence (misdemeanour) – liable to a fine and/or suspension of voting rights and/or prohibition from holding board positions</td>
</tr>
</tbody>
</table>

6. ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?

Yes. Any information gathered by statutory bodies, workers, auditors or any other agents of the AMCM, exclusively in the performance of their functions under the AMCM Rules, is subject to strict professional secrecy.

In exceptional and duly justified situations, and when such information is not subject to bank secrecy under the RJSF, the Chief Executive may consent to the disclosure of the information.

Where the AMCM, by virtue of a specific legal provision, discloses information to any other entity, such entity will also be subject to the secrecy obligations.

Nevertheless, this rule has an important exception. In the event of criminal proceedings, the legal duty of full co-operation with the Justice presiding over the proceedings overrides the professional secrecy obligations, obliging the AMCM to disclose all information acquired as directed by a court of law.

Violation of the professional secrecy obligations may give rise to disciplinary, civil and criminal liability.

Under the Criminal Procedure Code, until there is a decision made by the Criminal Investigation Court to proceed to trial or a dispatch determining the trial date, the parties involved are not allowed to disclose any information concerning the proceedings.

7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCRIMINATION AND LEGAL PROFESSIONAL PRIVILEGE?

Persons under investigation have the right to be accompanied by a lawyer. Further, persons required to take part in regulatory proceedings can be excused from answering questions pursuant to the privilege against self-incrimination.

All documents, communications and information supplied to legal advisers are subject to legal professional secrecy and can only be disclosed with the permission of the Macau Law Society (Associação dos Advogados de Macau) or by virtue of a positive decision of an upper court under the Criminal Procedure Code.

8. CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

Yes. Information obtained by the AMCM can be disclosed and used in criminal proceedings if deemed necessary by the Justice presiding over such proceedings.

Furthermore, the AMCM is obliged, under the Money Laundering Legislation (Law no. 2/2006), to identify and inform both the Public Prosecutor (Ministério Público) and the Financial Intelligence Office (Gabinete de Informação Financeira) (GIF) of potential money laundering operations and cooperate with them regarding the investigations of such operations.
9. WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?

The table below sets out the actions that the Chief Executive and the AMCM may take in exercising their regulatory functions:

<table>
<thead>
<tr>
<th>REGULATORS</th>
<th>ACTIONS</th>
</tr>
</thead>
</table>
| Chief Executive | - Revoke or suspend authorisation issued for the incorporation of credit and insurance institutions
|  | - Impose share capital reductions on institutions
|  | - Authorise the division, merger or reorganisation of credit institutions
|  | Before the occurrence of unstable situations regarding the forming or running of company boards, or liquidity or solvency problems of specific credit institutions:
|  | - Order investigations to clarify their activities
|  | - Impose temporary restrictions on their activities or order the adoption of certain practices or measures
|  | - Appoint decision-making advisers
|  | - Suspend directors
|  | - Provide monetary or financial support
|  | - Temporarily waive the requirement to fulfill obligations
|  | - Issue conditions for reimbursement of deposits
|  | - Implement the intervention status (eg, appointing an administrative committee or closing up service counters) and extra-judicial winding up provided for in the RJSF
|  | - Request the Attorney General for the Public Prosecutor (Ministério Público) to seek a court declaration of bankruptcy

| AMCM | - Control and maintain the register of all the necessary registrable acts
|  | - Verify the aptitude of the qualified shareholders and directors of institutions
|  | - Control the performance of duties of the board of directors or any other person with management functions at institutions
|  | - Approve the appointment and registration of external auditors by institutions
|  | - Carry out special audits on institutions
|  | - Suspend or amend credit and insurance institutions’ advertising campaigns
|  | - Approve any proposed amendments to institutions’ memoranda and articles of association
|  | - Conduct proceedings arising from violations of the RJSF
|  | - Require credit institutions to hold sufficient reserves of unencumbered assets to comply with the obligations arising from their activities

10. WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?

If the Chief Executive considers that the conduct of an entity or an individual does not meet the standard required in performing its respective functions and duties in the financial services industry, the following sanctions (on prior recommendation of the AMCM) may be imposed:

- imposition of a fine (between MOP10,000 and MOP5 million);
- suspension of shareholder voting rights (for a period of 1 to 5 years);
- prohibition on holding board positions or management functions (for a period of 6 months to 5 years);
- issuance of a reprimand together with a rectification requirement; or
- revocation or suspension of the authorisation issued.

11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?

There is no express formal settlement procedure for resolving enforcement actions.

Nevertheless, a disciplinary sanction under Question 10 above can be suspended by the Chief Executive (taking into account the degree of fault, prior conduct and specific circumstances of the offence), subject to the fulfilment of certain obligations deemed necessary to discipline the offending individual or entity or to normalise irregular situations.
12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?

An entity or individual may appeal against a disciplinary decision of the Chief Executive to a Court of Justice, and appeal against other decisions of the Chief Executive directly to the Court of Appeal (Tribunal de Segunda Instância).

Actions taken and decisions issued by AMCM can be disputed by means of appeal to the Administrative Court.

13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (EG, INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENTION?

Macau does not have an established securities and futures market. Therefore, there is no provision for market misconduct under Macau law. Nevertheless, under the Civil Code, the provision of misleading or false information by any person (including financial institutions), even if such provision is only negligent, is subject to civil action, under which the supplier of that information is responsible for any losses caused.

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?

As indicated under Question 13 above, there is no provision for market misconduct under Macau law. However, under the Civil Code, persons (including financial institutions) who/which have provided misleading or false information are liable to compensate investors who have suffered losses as a result.

15. DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?

The police do not generally assist in AMCM investigations. However, the AMCM has the statutory power, when performing its functions, to request the assistance or co-operation of any other public entity, including the criminal police, within the limits of the relevant statutes and criminal powers of investigation.

16. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?

The AMCM has signed co-operative agreements with its financial and insurance regulatory counterparts in Hong Kong, and a Memorandum of Understanding on Regulatory Co-operation with the China Banking Regulatory Commission. Co-operation agreements have also been signed with Angola and Mozambique’s Central Banks and with the Angolan Insurance Regulatory Body.

More recently, an agreement was reached with Cape Verde Central Bank in relation to information exchange concerning financial supervision and technical assistance.

The AMCM is a member of the Offshore Group of Banking Supervisors and joined the IMF’s General Data Dissemination System in 2007.

The AMCM is also a member of the Portuguese Speaking Countries Insurance Regulatory Bodies Association (Associação de Supervisores de Seguros Lusófonos) and the International Association of Insurance Supervisors.

17. WHICH REGULATORY BODIES ARE EMPOWERED TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

The regulatory body empowered to investigate and combat corruption in Macau is the Committee Against Corruption (Comissariado contra a Corrupção) (CCAC). The CCAC is responsible not only for implementing a corruption prevention programme, but also for investigating corruption in financial institutions. The CCAC is subject to the same rules as those governing the actions of the Public Prosecutor’s Office, with the statutory powers of a criminal police authority.

The Public Prosecutor’s Office is the competent judicial authority for investigating and combatting terrorist financing and money laundering. The Public Prosecutor is assisted, in the performance of its duties, by the criminal police. The body empowered to receive, analyse and forward to the competent authorities any information on suspicious money laundering operations is the GIF.

Public bribery offences are punishable under the Penal Code, while private bribery offences are punishable under Prevention and Punishment of Corruption on the Private Sector (Law no. 19/2009).

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/ NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORIZATION APPLICATION PROCESS?

Credit institutions and brokers applying for authorisation from the AMCM are required to disclose all information which the AMCM considers necessary for the application process. The same applies to the authorisation application process for branches of foreign credit institutions.

During the application process the AMCM will take into consideration, among other requirements, the suitability (i.e., reputation, character and reliability) of the applicant.

After a credit institution has obtained authorisation from the AMCM, the AMCM has powers to revoke it, for example when it considers that the authorisation has been obtained by means of misrepresentation or by any other illicit means.

19. IS A FINANCIAL INSTITUTION IN MACAU UNDER ANY OBLIGATION TO REPORT TO THE MACAU REGULATOR(S) ANY MISCONDUCT/ NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

An authorised credit institution must report to the AMCM, as soon as it discovers certain supervening facts regarding the suitability of its members of the general meeting, its administration and/or its supervisory board. Such facts include any circumstances where any of the above has been:

- judicially declared bankrupt or insolvent, or held responsible for the bankruptcy or insolvency of any company controlled by him/her or of which he/she was an administrator or director;
an administrator, director or holder of a controlling shareholding of any company whose bankruptcy or insolvency has been prevented, suspended or avoided, by means of extraordinary reorganisation measures, provided that there is an acknowledgment of his/her liability for such situation;

- sentenced or indicted for the crimes of forgery, theft, robbery, fraud, peculation, bribery and corruption, extortion, usury, issuance of cheques without funds and unauthorised acceptance of deposits or other refundable funds; and

- responsible for a breach of any law or regulation regarding the activity of a credit institution or any other entity subject to the supervision of the AMCM, when the seriousness or repetition of such breach so justifies.

Financial institutions are obliged to immediately report to the AMCM any difficulties in forming or running the board or any other unstable situations regarding liquidity or solvency that might risk the normal performance of the monetary, financial and exchange rate markets. Note that an institution’s duty to report under the Macau Financial System Act is very broad.

20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO "WHISTLE-BLOW" OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

"Whistle-blowing" obligations are imposed on financial institutions and other specified individuals under the RJSF, the Money Laundering Legislation and several AMCM regulations.

For example, external auditors of financial institutions are obliged to immediately report to the AMCM any facts that may cause severe damage to the institutions or to Macau’s credit system, such as criminal activities, money laundering operations, irregularities that may compromise the institutions’ liquidity or solvency, and forbidden operations.

With regard to suspected money laundering and terrorist financing activities, financial institutions are legally bound to report to the AMCM, which, in turn, is bound to report (under the Money Laundering Legislation) to both the Public Prosecutor and the GIF, the nature, complexity and amounts involved. Financial institutions are also bound to identify clients who conduct suspicious transactions and keep all documents related to such transactions for 5 years. The AMCM supervises the compliance by financial institutions with their “whistle-blowing” duties.

In order to provide guidance to financial institutions on identifying money laundering and terrorist financing activities, the AMCM has published several regulatory principles in circulars and notices (Circular no. 031/B/2009, Notice no. 010/2009 and Circular no. 026/B/2012).

21. HOW ARE HEDGE FUNDS REGULATED?

There are currently no specific rules which regulate hedge funds in Macau. Hedge funds are, however, subject to the general rules applicable to investment funds. These are regulated by Decree Law no. 83/99/M.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

A revision of the Money Laundering Legislation and the Administrative Regulation (no. 7/2006) is currently underway, following a public consultation on the proposed amendments in November 2012.
1. **WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN MALAYSIA?**

The main bodies are:
- Securities Commission (**SC**);
- Central Bank or Bank Negara Malaysia (**BNM**);
- Securities and derivatives exchanges, namely Bursa Malaysia Securities Berhad (**Bursa Securities**) and Bursa Malaysia Derivatives Berhad (**Bursa Derivatives**);
- Companies Commission of Malaysia (**CCM**); and
- Labuan Financial Services Authority (**Labuan FSA**).

2. **WHAT DOES EACH OF THESE BODIES REGULATE?**

**SC, Bursa Securities and Bursa Derivatives**

The SC is the main regulatory authority responsible for the securities and futures markets in Malaysia. The SC monitors compliance with securities laws, regulates takeovers and mergers of companies, regulates unit trust schemes, oversees the clearing house and the central depository, and is responsible for licensing and supervising the conduct of intermediaries and participants in the securities and futures markets. The SC is also the registering authority for prospectuses of corporations (other than unlisted recreational clubs) and the approving authority for corporate bond issues.

The SC also oversees Bursa Malaysia Berhad (**Bursa Malaysia**), an exchange holding company approved under the *Capital Markets and Services Act 2007* (**CMS Act**). Bursa Malaysia operates a fully integrated exchange with a complete range of exchange-related services, including trading, clearing, settlement and depository services. Bursa Malaysia is the holding company of:
- Bursa Securities, a stock exchange responsible for regulating companies which securities are listed on the Main Market and the ACE Market; and
- Bursa Derivatives, a futures and options exchange covering financial, equity and commodity-related instruments;
- Bursa Malaysia Securities Clearing Sdn Bhd, which provides, operates and maintains a clearing house for Bursa Securities;
- Bursa Malaysia Derivatives Clearing Sdn Bhd, which provides, operates and maintains a clearing house for Bursa Derivatives;
- Bursa Malaysia Depository Sdn Bhd, which provides, operates and maintains the central depository;
- Bursa Malaysia Depository Nominees Sdn Bhd, which acts as a nominee for the central depository and receives securities on deposit for safe custody or management;
- Bursa Malaysia Bonds Sdn Bhd, which provides, operates and maintains the registered electronic facility for the secondary bond market;
- Bursa Malaysia Information Sdn Bhd, which provides and disseminates prices and other information relating to securities quoted on the exchanges within the Bursa Malaysia group;
- Bursa Malaysia Islamic Services Sdn Bhd, which provides, operates and maintains a Shari’ah compliant commodity trading platform; and
- Labuan International Financial Exchange Inc (**LFX**), a self-regulatory international financial exchange based in Labuan, Malaysia’s international business and financial centre (**IBFC**). The LFX, established in 2000 to complement various Labuan financial services, provides a funding mechanism for international companies operating in the Asia Pacific region and caters for the listing of multi-currency financial instruments.

**BNM**

BNM regulates financial institutions, the money market, payment systems and matters relating to exchange control. The insurance and takaful industry is also under the supervision of BNM. Leasing and factoring businesses fall within the regulatory oversight of BNM but are currently unregulated under the *new Financial Services Act 2013* (**FS Act**).

**CCM**

The CCM regulates businesses and companies incorporated in Malaysia and foreign companies operating a business in Malaysia.

**Labuan FSA**

The Labuan FSA (formerly known as Labuan Offshore Financial Services Authority) is the regulatory body established to coordinate efforts to promote and develop Labuan, a federal territory off the coast of Borneo in East Malaysia, as an IBFC. It supervises the activities of the financial services industry in Labuan and processes applications to conduct business in the Labuan IBFC, including banking, insurance, trust and fund management, the incorporation of companies and registration of foreign companies in Labuan, as well as the establishment of
Labuan trust companies. The Labuan FSA is responsible for administering and enforcing Labuan financial services legislation and works with offshore institutions in Labuan to promote Labuan financial services.

3. WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN MALAYSIA?

The CMS Act governs all matters relating to the formation and conduct of stock and futures exchanges, clearing houses, relations between the exchanges and members and issuers of securities, licensing and conduct of market participants, prohibited practices in securities dealings, regulation of intermediaries and participants in the futures industry and fund raising activities.

In this respect, Bursa Malaysia, as one of the frontline regulators of the Malaysian capital market, has issued various rules which form the regulatory and supervisory framework to regulate market participants and trading activities in the market. The rules of Bursa Malaysia Depository Sdn Bhd, Bursa Securities and Bursa Malaysia Securities Clearing Sdn Bhd deal with compliance by participating organisations such as dealers and brokers.

The Main Market Listing Requirements (Main LR) must be complied with by issuers whose securities are listed and quoted on the Main Market, and by their directors, officers and advisers. The Main LR covers a variety of matters including the minimum requirements in relation to admission for listing, new issues of securities, pre and post-listing obligations, disclosure of financial reports and the enforcement powers of Bursa Securities in relation to breaches of the Main LR. Similarly, the ACE Market Listing Requirements (ACE LR) must be complied with by issuers whose securities are listed and quoted on the ACE Market. Bursa Malaysia also administers the Rules of Bursa Malaysia Derivatives Bhd, the Rules of Bursa Malaysia Derivatives Clearing Sdn Bhd as well as the Rules of Bursa Malaysia Bonds Sdn Bhd.

The Labuan Financial Services and Securities Act 2010 (LFSS Act) provides for the licensing and regulation of financial services and securities in Labuan. The LFX is regulated by the LFSS Act. The procedures and regulations governing the listing and trading of financial instruments on the LFX are contained in the Rules of Labuan International Financial Exchange Inc.

Two significant pieces of legislation, namely the FS Act and the Islamic Financial Services Act (IFS Act) came into force on 30 June 2013. The FS Act and IFS Act use a similar framework as the UK’s Financial Services Act 2012 and Australia’s Financial Services Reform Act 2001, which bring various financial services and products under one licencing regime. Upon coming into force, the FS Act replaced the Insurance Act 1996, the Banking and Financial Institutions Act 1989, the Exchange Control Act 1953 and the Payment Systems Act 2003, whereas the IFS Act replaced the Islamic Banking Act 1983 and the Takaful Act 1984. The FS Act and IFS Act also provide BNM with the necessary regulatory and supervisory oversight powers.

As such, the following activities are now regulated under the FS Act and the IFS Act (the IFS Act contains similar provisions to the FS Act but governs Islamic financial services):

- banking activities and the licensing of financial institutions (BNM also issues various guidelines, rules, guidance notes and notices);
- insurance and takaful activities (BNM also issues various guidelines, rules and circulars which are not publicly available and are provided directly to the licence holders); and
- foreign exchange control (BNM also issues rules and notices as part of its foreign exchange administration).

The Labuan FSA is responsible for administering and enforcing the provisions of the Labuan Financial Services Authority Act 1996 (Labuan FSA Act), the Labuan Companies Act 1990 (LC Act), the LFSS Act, the Labuan Islamic Financial Services and Securities Act 2010, the Labuan Foundations Act 2010 and the Labuan Limited Partnership and Limited Liability Partnership Act 2010.

In relation to companies, the Companies Act 1965 contains provisions which deal with the lodging of prospectuses with the CCM, officers’ dealings in securities, disclosure of interests by directors, as well as securities law offences by companies, directors, auditors and debenture holders.

4. DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?

No. Generally, BNM has powers under the FS Act and IFS Act to regulate financial institutions, insurers and takaful providers as well as other related entities, and to regulate foreign exchange administration and money markets, whereas the SC is accorded powers under the Securities Commission Act 1993 (SC Act) and the CMS Act to regulate the securities and futures market and the conduct of intermediaries and participants. The Labuan FSA regulates international business and financial services activities in Labuan. Bursa Securities, on the other hand, regulates a range of exchange-related services, including trading, clearing, settlement and depository services.
5. WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?

The powers of investigation of the SC, BNM, Bursa Securities and the Labuan FSA are set out in the table below:

<table>
<thead>
<tr>
<th>POWERS</th>
<th>SC</th>
<th>BNM</th>
<th>BURSA SECURITIES</th>
<th>LABUAN FSA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who conducts investigations</td>
<td>SC and persons appointed by the SC as investigating officers</td>
<td>BNM or any person appointed by BNM as investigating officer</td>
<td>An officer of Bursa Securities, an officer of Bursa Malaysia, or any agent of or any person acting under the direction of Bursa Securities (pursuant to the Rules of Bursa Malaysia Securities Bhd (Bursa Securities Rules))</td>
<td>Labuan FSA, an officer or employee of Labuan FSA or any other suitable person appointed by Labuan FSA in exercising its general supervisory functions</td>
</tr>
<tr>
<td>Who are required to assist in investigations</td>
<td>Any person</td>
<td>Any person</td>
<td>Participating organisations (ie, dealers and universal brokers), their agents, employees and/or any person required to be registered under the Bursa Securities Rules</td>
<td>Any person</td>
</tr>
<tr>
<td>Require production of records and documents</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Require a party to answer questions or provide information</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Conduct interviews</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
### POWERS

<table>
<thead>
<tr>
<th>Conduct searches at premises</th>
<th>Yes</th>
<th>Yes</th>
<th>Yes</th>
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<td>Statutory power to compel production of evidence and/or attendance of witnesses</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<th>Consequences of non-compliance with the above investigation requirements</th>
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</thead>
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<tr>
<td>Criminal offence - liable to a fine and imprisonment</td>
</tr>
<tr>
<td>Criminal offence - liable to a fine and imprisonment</td>
</tr>
<tr>
<td>Disciplinary action may be taken (pursuant to the Bursa Securities Rules)</td>
</tr>
<tr>
<td>Criminal offence - liable to a fine and imprisonment</td>
</tr>
<tr>
<td>After consultation with the SC (where required), actions can be taken or penalties imposed (pursuant to the Main LR and the ACE LR)</td>
</tr>
</tbody>
</table>

6. **ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?**

Save for any of the purposes under securities laws or for the purpose of any civil or criminal proceedings under any written law or otherwise authorised by the SC, the SC, members of its committees or its officers, servants and agents cannot disclose information obtained in the course of their duties. Contravention of such requirement is a criminal offence which is punishable on conviction with a fine and/or a term of imprisonment.

Any information obtained by the Labuan FSA in the course of its investigation shall be kept confidential between the Labuan FSA and the person supplying the information. However, the Labuan FSA may disclose such information in the following circumstances:

- where the Labuan FSA deems it fit to do so, but the disclosure does not specifically relate to any individual financial institution;
- to the home supervisory authority of the individual Labuan financial institution, if the home supervisory authority has the necessary provision in its constituent documents or corresponding laws to safeguard such information from unlawful disclosure;
- to the domestic law enforcement agency, where there is reasonable suspicion that a criminal offence has been or is about to be committed, subject to the execution of a secrecy undertaking in favour of the Labuan FSA relating to the provision of any such information;
- pursuant to an order of a court of competent jurisdiction in any proceedings;
- where the financial institution or its customer consents to the disclosure; or
- where it is necessary to give effect to any legal arrangement or memorandum of understanding entered into with any foreign government or any authority of another country or relevant domestic law enforcement agency.

Any other person who has any information or document which, to their knowledge, has been disclosed in contravention of the Labuan FSA Act shall not disclose the information or document to any other person, unless lawfully required to do so by any court or under any written law. Contravention of this requirement is a criminal offence which is punishable on conviction with a fine and/or a term of imprisonment.

Further, all proceedings (other than criminal proceedings) relating to any Labuan company or foreign company in Labuan commenced in any court, either under the provisions of the LC Act or for the sole purpose of determining the rights or obligations of officers, members or holders of debentures shall, unless the court otherwise orders, be heard in private and no details of the proceedings shall be published by any person without leave of the court.

Under the Bursa Securities Rules, the participating organisation or its agents or employees must keep the findings or results of investigations confidential and must not disclose them to any person, except Bursa Malaysia, Bursa Securities, the SC, any authorised officer of the SC or any investigating governmental authority or agency involved in investigations conducted under the Bursa Securities Rules.

The FS Act provides that any document or information produced by BNM in exercising its administration or enforcement powers shall not be disclosed by any persons, except in circumstances as may be specified by BNM. In any court proceedings, where any document or information is likely to be disclosed, the court may (by its own motion or at the application of the party to the proceedings) order such proceedings to be held in private. Such documents or information shall be secret between the court and the parties or BNM, and no such party shall disclose them to any other person. Failure to observe the confidentiality provisions under the FS Act is a criminal offence which is punishable on conviction with a fine and/or a term of imprisonment.
It is worth noting that the Whistleblower Protection Act 2010 (WP Act) provides that any person who makes or receives a disclosure of improper conduct or obtains confidential information in the course of an investigation into such disclosure shall keep the information confidential. Failure to do so constitutes an offence and attracts a fine and/or a term of imprisonment.

7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCrimINATION AND LEGAL PROFESSIONAL PRIVILEGE?

Yes. Information given in the course of assisting in an investigation by the SC, BNM, the Labuan FSA and Bursa Securities shall not be disclosed or used to incriminate the person who provided the information before any court or other authority. However, this protection is not available in the following circumstances:

- where the person providing the information has himself/herself participated in the improper conduct disclosed;
- where a person has wilfully made in his/her disclosure of improper conduct a material statement which he/she knew or believed to be false or did not believe to be true;
- where the disclosure of improper conduct is frivolous or vexatious;
- where the disclosure of improper conduct principally involves questioning the merits of government policy, including the policy of a public body;
- where the disclosure of improper conduct is made solely or substantially with the motive of avoiding dismissal or other disciplinary action; or
- where a person commits an offence under the WP Act in the course of making the disclosure or providing further information.

There is a recognised concept of legal privilege in relation to communications involving advocates and solicitors in Malaysia, which is set out in the Evidence Act 1950. Documents provided to an advocate or solicitor in the course and for the purpose of his/her professional employment are generally protected from disclosure, including disclosure to regulatory bodies such as the SC, Bursa Securities, BNM and the Labuan FSA. The same applies to communications made to, and legal advice received from, an advocate or solicitor in the course and for the purpose of his/her professional employment.

Neither the CMS Act, the SC Act, the FS Act, Bursa Securities Rules nor the Labuan legislation expressly provide for a right of legal representation for persons who are required to attend interviews and examinations as part of an investigation by the SC, BNM, Bursa Securities or the Labuan FSA. In practice, such persons are generally allowed to be accompanied by their legal representatives.

8. CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

The findings and results of all investigations under the Bursa Securities Rules are confidential. They may not be revealed to any authority other than Bursa Securities, Bursa Malaysia, the SC and other investigating governmental authorities involved in investigations conducted under the Bursa Securities Rules. Such findings or results shall not be used except in connection with a hearing, whether conducted by Bursa Securities, Bursa Malaysia, the SC or a court of law.

Notwithstanding the obligation of secrecy, the SC and BNM may, on their own initiative or at the request of a public officer, supply to a police officer or other public officer information obtained by them in the course of their investigations. This information shall be for the use of such police officer or other public officer in the discharge of his/her duties in respect of any person. Upon receiving a written request, the SC may also provide assistance to a foreign authority exercising similar functions to the SC or any person outside Malaysia exercising regulatory functions, where the SC considers it necessary to assist for the purpose of carrying out investigations of any alleged breach of the legal or regulatory requirements which the foreign authority enforces.

Where the Labuan FSA suspects any person to have committed any offence under any of the Labuan legislation, it is lawful for the Labuan FSA, in the course of exercising its powers or discharging its functions, to give information of such commission to a police officer, or to a banking or other financial institution or person affected by such offence, or to any authority having the power to investigate under, or enforce, the provisions of the relevant law.
9. **WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?**

The actions which may be taken by the SC, BNM, the Labuan FSA and Bursa Securities are set out below:

<table>
<thead>
<tr>
<th>BODIES</th>
<th>ACTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SC</td>
<td>Institute criminal prosecution with the written consent of the public prosecutor</td>
</tr>
<tr>
<td></td>
<td>Institute civil proceedings on behalf of a person who suffered loss or damage, where it is in the public interest to do so</td>
</tr>
<tr>
<td></td>
<td>Apply to the court for an order, for example, to restrain a person from carrying on the business of dealing in securities or futures contracts, or to remove the chief executive or a director of a public company from office</td>
</tr>
<tr>
<td></td>
<td>Direct any licensed person, trustee approved by the SC, custodian, private retirement scheme administrator, registered person and any person who maintains a trust account for clients’ assets to not deal with monies/properties of clients of a licensed person under the CMS Act, not transfer records/documents, and not enter into certain specified transactions</td>
</tr>
<tr>
<td></td>
<td>Apply to the court for a declaration that particular transactions contravene securities laws or that a futures contract is void or voidable</td>
</tr>
<tr>
<td></td>
<td>Present a winding up petition against a company</td>
</tr>
<tr>
<td>BNM</td>
<td>Institute civil proceedings against any person where it appears that there is reasonable likelihood that such person will contravene or has contravened, will breach or has breached, will fail to comply or has failed to comply with any provisions or regulations made under the FS Act, or any standards or directions issued by BNM</td>
</tr>
<tr>
<td></td>
<td>Institute criminal proceedings upon obtaining written consent from the public prosecutor</td>
</tr>
<tr>
<td></td>
<td>Make an application to the court to appoint a receiver or manager to manage the whole or part of the business, affairs or property of an institution</td>
</tr>
<tr>
<td></td>
<td>Present a winding-up petition against an institution</td>
</tr>
<tr>
<td>Labuan FSA</td>
<td>Revoke, vary or impose terms, conditions or restrictions on the operation of a licensed entity</td>
</tr>
<tr>
<td></td>
<td>Apply to the court for an order to take such action as the Labuan FSA considers necessary to protect the interests of beneficiaries, investors, creditors or any other similar interested parties of a licensed entity</td>
</tr>
<tr>
<td></td>
<td>Institute proceedings (both civil and criminal) for any matters related to its functions and powers</td>
</tr>
<tr>
<td></td>
<td>Intervene in any proceedings where a Labuan financial institution is involved as a party</td>
</tr>
<tr>
<td></td>
<td>Present a winding up petition against a Labuan company</td>
</tr>
<tr>
<td>Bursa Securities</td>
<td>Take disciplinary action</td>
</tr>
<tr>
<td></td>
<td>Apply to the court to appoint a manager or receiver to facilitate the performance of outstanding contracts</td>
</tr>
</tbody>
</table>

10. **WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?**

<table>
<thead>
<tr>
<th>BODIES</th>
<th>SANCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SC</td>
<td>Direct the person in breach to comply with securities laws</td>
</tr>
<tr>
<td></td>
<td>Impose a fine</td>
</tr>
<tr>
<td></td>
<td>Reprimand the person in breach publicly or privately</td>
</tr>
<tr>
<td></td>
<td>Require the person in breach to take such steps as the SC may direct or to remedy and mitigate the breach, including making restitution to any person aggrieved by the breach</td>
</tr>
<tr>
<td></td>
<td>Refuse to accept or consider any submissions for applications made under Part VI of the CMS Act, such as those in relation to approval of capital market products or securities transactions</td>
</tr>
<tr>
<td></td>
<td>Impose a moratorium on or prohibit any trading of or dealing in securities by a promoter, director or any person connected to them</td>
</tr>
</tbody>
</table>
BNM
- Remove a director, chief executive officer or senior officer from office or employment in an institution, if BNM is of the opinion that he/she no longer fulfils the fit and proper requirements or has breached or contributed to the non-compliance of any provisions of the FS Act
- Issue a direction in writing to the institution, its director, chief executive officer or senior officer to cease or refrain from committing an act or pursuing a course of conduct in relation to its business, affairs or property, if BNM is of the opinion that it is necessary to remedy non-compliance
- With the prior written approval of the Minister of Finance, by an order in writing, assume control of or manage the whole or part of the business, affairs or property of the institution, or appoint any person to do so on behalf of BNM
- Apply to the court to make an order staying the commencement or continuance of any civil proceeding by or against the institution with respect to any of its business
- Make an order in writing requiring a person in breach to comply with a certain direction
- Impose a monetary penalty for a failure to comply with provisions of the FS Act, regulations made under the FS Act, or any directions issued by BNM
- Reprimand in writing the person in breach or require the person in breach to issue a public statement in relation to the breach
- Make an order in writing requiring the person in breach to take such steps as BNM may direct to mitigate the effect of the breach
- Make an order requiring the person in breach to make restitution to any other person aggrieved by the breach

Labuan FSA
- Impose a fine
- Issue a direction to compel a special auditor to be appointed to carry out a special audit of a Labuan financial institution
- Revoke any consent, licence or registration made under the LFSS Act
- Order the appointment or removal of any principal officers of a Labuan financial institution

Bursa Securities
In exercising its functions under the Bursa Securities Rules:
- Reprimand a participant, publicly or privately
- Impose a fine
- Suspend a participant from trading on or through the stock market of Bursa Securities
- Strike off a participant from the register of Bursa Securities
- Impose restrictions on a participant’s activities
In exercising its functions under the Main LR and the ACE LR:
- Issue a caution letter or a private or public reprimand
- Impose a fine of up to RM1 million
- Issue a letter directing the listed issuer, management company, trustee, adviser or the person in default to rectify any non-compliance
- Impose one or more condition(s) to be complied with
- Refuse to accept applications or submissions or documents made in relation to applicants, listed issuers, management companies, trustees or trustee managers, with or without condition(s) imposed (after consultation with the SC)
- Impose condition(s) on the delivery or settlement of trades entered into in respect of the listed issuer’s securities
- Suspend trading of securities
- De-list any listed securities, a listed issuer or any class of its listed securities
- Impose a moratorium on or prohibition of dealings in the listed issuer’s securities and/or other listed securities by a director, officer or any other person
- Mandate an education or training programme to be undertaken/implemented by the listed issuer for its directors and/or management
- Take any other action which Bursa Securities may deem appropriate
11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?

Under the Bursa Securities Rules, a participant can propose a settlement before Bursa Securities makes a decision regarding a disciplinary action, by agreeing to a set of facts, penalties or liabilities. Bursa Securities may reject, accept or vary the proposed settlement. However, if the proposed settlement is accepted, it will be recorded as a decision by Bursa Securities. Under the Main LR and the ACE LR, similar settlement procedures apply to issuers whose securities are listed on the Main Market and the ACE Market respectively.

The FS Act and the LFSS Act do not expressly provide for settlement of enforcement actions taken by BNM or the Labuan FSA. Although the CMS Act does not expressly provide for settlement of enforcement actions taken by the SC, in practice it is possible for a person who is in contravention of the CMS Act to enter into a settlement with the SC.

12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?

A participant against whom a decision has been made by Bursa Securities may appeal against such decision by notifying Bursa Securities of its intention to appeal within 14 days of the decision. Bursa Securities shall establish a committee to determine the appeal, comprising persons appointed by it. The persons appointed for such committee must not have been involved in making the decision which is the subject of the appeal. On appeal, such decision may be affirmed, varied or set aside and the decision on appeal shall be final and binding on the appellant. A similar procedure applies to listed issuers who wish to appeal decisions made against them by Bursa Securities.

The SC may review its own decision upon an application made by a person who/which is aggrieved by the decision. Such application shall be made within 14 days after the aggrieved person is notified of the decision. Any reviewed decision shall be final.

Where an enforcement action has been taken by BNM against a person who has breached any of the provisions of the FS Act, the FS Act allows a person who/which is aggrieved by BNM’s decision to appeal by filing a notice in writing to the Monetary Penalty Review Committee (MPR Committee), within 21 days of being notified of the decision. The MPR Committee shall consist of 3 to 5 members appointed by the Minister of Finance from amongst the non-executive directors of BNM or other persons. The MPR Committee may determine its own procedures for the appeal.

A person who is aggrieved by other decisions of BNM may appeal against such decision to the Minister of Finance. The decision of the Minister of Finance shall be final.

As for decisions made in relation to an application or revocation of licence or registration under the LFSS Act, a person may appeal to the Labuan FSA in writing within 30 days of the decision. The appeal decision may be further appealed to the Minister of Finance, whose decision shall be final.

13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (EG, INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENTION?

A person who/which contravenes the market misconduct provisions under the CMS Act commits a criminal offence and may also be subject to civil action by either aggrieved investors or the SC. Civil action may be taken by aggrieved investors or the SC whether or not a person has been charged with an offence under the market misconduct provisions, and whether or not a contravention of the provisions has been proved in a prosecution.

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?

Investors who suffer loss as a result of securities or futures market misconduct in contravention of the CMS Act may institute civil proceedings against the party in breach to recover the loss. As indicated under Question 13 above, civil proceedings may be commenced regardless of whether the party in breach has been charged with an offence in respect of the contravention or whether a contravention has been proven in a prosecution.

A person who suffers monetary loss due to the: (a) defalcation or fraudulent misuse of monies or property by a director, officer, employee or representative of a holder of a capital markets services licence which carries on the business of dealing in securities, and which is at the time a participating organisation; or (b) insolvency of a participating organisation may be entitled to compensation from a compensation fund established under the CMS Act. A person who suffers monetary loss due to the defalcation or fraudulent misuse of monies or property by a director, officer, employee or representative of a holder of a capital markets services licence which carries on the business of trading in futures contracts may be entitled to compensation from a fidelity fund established under the CMS Act.

The CMS Act and the LFSS Act also provide for the right to recover the loss or damage resulting from false or misleading information or a material omission in a prospectus.

15. DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?

The Commercial Crime Investigation Department of the Royal Malaysian Police and the Malaysian Anti-Corruption Commission (MACC), which have all the powers and immunities of the police, may assist these regulatory bodies in investigations involving the financial services industry.

16. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?

The SC is a member of the International Organisation of Securities Commissions (IOSCO). The SC is a signatory to numerous bilateral Memoranda of Understanding (MOUs) as well as the IOSCO’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. The SC has, as at August 2014, signed 33 MOUs with regulators of other countries including Thailand, Hong Kong, China, Taiwan, Australia, France, New Zealand, India, Indonesia, Korea, the United Arab Emirates and Ireland. These MOUs provide for mutual assistance, cross-border co-operation and exchange of information to aid regulators in ensuring compliance with the laws and regulations of their respective countries. The SC has also entered into regulatory cooperative arrangements with the securities regulators of China, Dubai, Indonesia, Hong Kong and India.
Since 2011, BNM has signed several MOUs with neighbouring countries of Malaysia. In 2011, the Monetary Authority of Singapore and BNM signed a MOU to establish a cross-border collateral arrangement aimed at facilitating more effective liquidity management by Singapore and Malaysia's financial institutions. In 2012, the Hong Kong Monetary Authority, BNM and Euroclear Bank launched a pilot platform for cross-border investment settlement of debt securities to increase efficiency and strengthen the capacity for debt securities issuance activities in the Asian region. Following that, BNM signed a MOU with the Bank of Thailand to enter into a cross-border collateral arrangement to facilitate a reciprocal operational arrangement aimed at enhancing liquidity facilities to financial institutions in both countries.

17. WHICH REGULATORY BODIES ARE EMPOWERED TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

The MACC, established under the Malaysian Anti-Corruption Commission Act 2009, is the main regulatory body responsible for combating corruption in Malaysia.

The Financial Intelligence and Enforcement Department of BNM was created by the Minister of Finance under the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATF Act) to investigate money laundering offences and to suppress terrorism financing. Pursuant to the AMLATF Act, BNM has issued sectoral guidelines on anti-money laundering and counter financing of terrorism for banking/institutional financial institutions and insurance/takaful institutions. The SC has also issued Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries (PMLTF Guidelines) which provide guidance to dealers, fund managers, futures brokers and futures fund managers on how to comply with the provisions of the AMLATF Act.

Pursuant to the AMLATF Act, the Minister of Home Affairs may make an order declaring an entity as a “specified entity” for committing or attempting to commit a terrorist act. This order will be made upon receipt of information regarding such an act from a police officer or where the Security Council of the United Nations decides, pursuant to the Charter of the United Nations, on the measures to be employed by the government of Malaysia (and other governments) to give effect to any of its decisions. For the purpose of implementing the order, the Minister of Home Affairs may consult the relevant regulatory or supervisory authority (ie, BNM, the SC or the Labuan FSA), or such other body or agency as he/she deems appropriate. Such authority or other body or agency shall provide assistance to facilitate the order on the respective institutions that it regulates and supervises.

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/ NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORIZATION APPLICATION PROCESS?

Under the CMS Act and the Licensing Handbook issued by the SC, an applicant of a licence under the CMS Act is required to ensure that its directors, chief executive officer, managers and controllers are fit and proper persons. The applicant is required to conduct the necessary due diligence on its nominated directors and chief executive officer to ensure that they are fit and proper persons pursuant to the CMS Act. A declaration that there is no past misconduct/non-compliance is required to be made in the application form for a licence. Past misconduct or non-compliance by an institution and/or its employees may result in the SC refusing to grant a licence. Additionally, in the event that the SC later finds a director or chief executive officer to be unfit, it may direct the person’s removal from office.

BNM, Bursa Securities and the Labuan FSA do not prescribe requirements to provide information about past misconduct or non-compliance during the licence authorisation process.

19. IS A FINANCIAL INSTITUTION IN MALAYSIA UNDER ANY OBLIGATION TO REPORT TO THE MALAYSIAN REGULATOR(S) ANY MISCONDUCT/ NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

There is no express legal obligation on the part of a financial institution to report to the Malaysian regulator(s) any misconduct/ non-compliance by its employees or clients.

However, under the CMS Act, the SC may require a financial institution to furnish any information it considers necessary at any time after the granting of a licence.

20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

Under the CMS Act, an auditor of a listed corporation has a statutory obligation to report to the SC and Bursa Securities where the auditor believes there has been a breach of the securities laws or the Bursa Securities Rules, or any matter which may adversely affect the financial position of the listed corporation.

The CMS Act also provides protection for specific employees of a listed corporation who inform the SC and Bursa Securities of any information relating to breaches of the securities laws or the Bursa Securities Rules. Such employees include the chief executive, any officer responsible for preparing or approving financial statements or financial information, an internal auditor or a secretary of the listed corporation. This does not impose a statutory obligation on the relevant employee to “whistle-blow”, but in the event he/she does make a disclosure in good faith and in the intended performance of his/her duties, he/she is accorded statutory protection.

Under the FS Act and the IFS Act, an auditor of an institution has an obligation to immediately report to BNM if, in the course of its duties as an auditor of an “institution”, it is satisfied that:

- there has been a breach or contravention of any provision of the FS Act and the IFS Act or non-compliance with any standards as may be specified by BNM which may have a material effect on the financial position of the institution;
- an offence involving fraud or dishonesty under any written law has been committed by the institution or by any director or officer of the institution;
- any irregularity which may have a material effect on the financial position of the institution, including any irregularity which jeopardises or may jeopardise the interest of the depositors, policy owners, creditors of the institution, participants or users, or any other serious irregularity, has occurred;
it is unable to confirm that claims of depositors, policy owners, creditors of the institution, participants or users, as the case may be, are covered by the assets of the institution or insurance fund, as the case may be;
• there is any weakness in the internal controls which is relevant to the financial reporting process undertaken by the institution; or
• the financial position of the institution is likely to be or has been materially affected by any event, conduct of activity by the institution or any weakness in the internal control of the institution.

“Institution” is defined as an authorised person engaged in banking business, insurance business or investment banking business, an operator of a designated payment system and an approved person engaged in insurance broking business or financial advisory business.

Under the AMLATF Act, every citizen of Malaysia and every company incorporated in Malaysia shall disclose immediately to the Inspector General of Police the existence of property in their possession or control that they have reason to believe is owned or controlled by or on behalf of a specified entity and shall disclose to the Inspector General of Police information relating to such specified entity. As discussed under Question 17 above, an entity may be declared as a “specified entity” by the Minister of Home Affairs for committing or attempting to commit a terrorist act. Any person who fails to provide information to the Inspector General of Police as described above commits an offence and shall be liable on conviction to a fine not exceeding RM1 million, imprisonment for a term not exceeding 1 year, or both. BNM, the SC and the Labuan FSA have obligations under the AMLATF Act to immediately report to the Minister of Home Affairs if any person or class of persons under their regulation or supervision is found to be in possession or control of terrorist property or property owned or controlled by or on behalf of any specified entity.

Under the SC’s PMLTF Guidelines, a reporting institution (ie, licensed dealers, fund managers, futures brokers, futures fund managers and approved management companies) is to consider lodging a suspicious transaction report with the Financial Intelligence and Enforcement Department of BNM where appropriate.

Under the AMLATF Act and the AMLATF Guidelines, a reporting institution is required to promptly submit a suspicious transaction report to the Financial Intelligence and Enforcement Department of BNM when any of its employees suspects or has reason to suspect that a transaction or attempted transaction involves proceeds from an unlawful activity, or that its customer is involved in money laundering or financing of terrorism. Failure to do so could result in BNM taking enforcement action, including obtaining a court order against any or all of the officers or employees of the reporting institution, on terms that the court deems necessary to enforce compliance.

The Labuan FSA Act does not impose a requirement to “whistle-blow”, but provides that an informer’s identity shall not be disclosed or be required to be disclosed in any proceedings in court, tribunal or other authority.

Although the WP Act does not impose any obligation on a person to “whistle-blow” where he/she suspects any person has engaged, is engaging or is preparing to engage in improper conduct, the Act empowers both government departments and the MACC to look into complaints and protects those who disclose information on wrongdoings and whose assistance is required for investigations.

21. HOW ARE HEDGE FUNDS REGULATED?

Hedge funds, restricted investment schemes and other collective investment schemes are regulated by the SC. Any issue, offer or invitation in relation to such scheme requires the approval of the SC. The establishment, administration and management of funds are also subject to the requirements of the CMS Act and relevant guidelines and circulars issued by the SC. For example, the approval of the SC for the establishment of the scheme, registration and lodgement of a trust deed and a prospectus with the SC, and the appointment of a trustee approved by the SC. The SC has also prescribed minimum content requirements for prospectuses and for trust deeds constituting the funds.

Funds are required to be managed and administered by a management company approved and licensed by the SC. Fund managers are themselves subject to strict requirements, including the duties prescribed under the CMS Act, restrictions on business activities and minimum shareholders’ funds requirements.

The channels of marketing and distribution of the funds also require the approval of the SC and must comply with the requirements of the relevant guidelines issued by the SC. For example, persons engaging in the marketing and sale of units of the funds are required to be registered with the Federation of Malaysian Unit Trust Managers.

If a fund is primarily regulated in a jurisdiction other than Malaysia, whether listed or unlisted (foreign fund), it would also be subject to the SC’s Guidelines for the Offering, Marketing and Distribution of Foreign Funds (Foreign Fund Guidelines), in addition to the other applicable SC guidelines and the relevant provisions of the CMS Act. The foreign fund which is permitted to be offered, marketed and distributed in Malaysia must be of a category or type of fund that is allowed for distribution in a recognised jurisdiction as set out in the Foreign Fund Guidelines. The foreign fund must also be approved, registered or authorised by the relevant regulator in a recognised jurisdiction. If the foreign fund is listed, it must be listed and traded on an exchange that is regulated by the relevant regulator in a recognised jurisdiction. A foreign fund that is offered outside of a recognised jurisdiction may also be offered, marketed and distributed in Malaysia if it meets the criteria set out in the Foreign Fund Guidelines.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

The Malaysian Corporate Law Reform Committee has recently completed the drafting of the Companies Bill 2013 (Companies Bill), which seeks to amend the Companies Act 1965. This move is part of the CCM’s strategic direction plan in facilitating the development of a conducive and dynamic business and regulatory environment for Malaysia which is in line with international standards and practices.

The Companies Bill amends the accounting and financial reporting provisions to comply with current global accounting practices. It also introduces concepts which have been adopted from other countries, such as the concept of a single member and a single director company, the migration to a no par value share regime and the enhancement of shareholders’ rights and protection. In addition, it introduces the concept of a “solvency test” which will improve business efficacy and reduce the cost of certain corporate exercises, such as share buy-backs, provision of financial assistance and capital reduction by companies that are able to satisfy this test.
PHILIPPINES

SYCIP SALAZAR HERNANDEZ & GATMAITAN

1. WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN THE PHILIPPINES?

The main government bodies are:
- Bangko Sentral ng Pilipinas (BSP);
- Philippine Deposit Insurance Corporation (PDIC);
- Securities and Exchange Commission (SEC); and
- Insurance Commission (IC).

2. WHAT DOES EACH OF THESE BODIES REGULATE?

The BSP supervises the operations and activities of banks, quasi-banks, trust entities, and other financial institutions which are subject to its supervision under special laws.

The PDIC conducts examinations of banks with the prior approval of the BSP’s Monetary Board.

The SEC has supervisory control over all corporations, partnerships and associations which are recipients of primary franchises and/or licences or permits issued by the Philippine government to operate a business in the Philippines. The SEC enforces all laws which affect corporations, partnerships and associations, and which are not otherwise enforced by another government agency. The SEC also supervises self-regulatory organisations such as the Philippine Stock Exchange and the Philippine Dealing & Exchange Corporation.

The IC is responsible for the implementation of all laws relating to insurance and pre-need companies.

3. WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN THE PHILIPPINES?

The principal laws regulating the banking industry (including non-banking financial institutions subject to BSP supervision) are:
- the New Central Bank Act;
- the General Banking Law for universal and commercial banks;
- the Thrift Banks Act for thrift banks;
- the Rural Banks Act for rural banks;
- the Co-operative Code for co-operative banks;
- the Revised Charter of the Development Bank of the Philippines which only applies to the Development Bank of the Philippines; and
- the Land Bank Charter which only applies to the Land Bank of the Philippines.

The BSP regularly issues circulars relating to the conduct and operation of the above entities. Most of these circulars and other issuances have been systematically compiled in two volumes – the Manual of Regulations for Banks and the Manual of Regulations for Non-bank Financial Institutions.

The PDIC charter is set out in the Republic Act No. 9302 (as amended). The PDIC rules are in the form of regulatory issuances to member banks.

The SEC’s mandate is derived from the Corporation Code, the Securities Regulation Code, the Investment Houses Law, the Investment Company Act, and certain other special laws. The SEC issues rules and guidelines to the corporations, partnerships and other associations which are subject to its jurisdiction.

The IC issues circulars to regulate insurance and pre-need companies pursuant to the Insurance Code and the Pre-Need Code respectively.

4. DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?

The regulatory bodies have different powers of enforcement, as described under Questions 5, 9 and 10 below.
5. WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?

The table below sets out the powers of investigation of these bodies:

<table>
<thead>
<tr>
<th>POWERS</th>
<th>BSP</th>
<th>PDIC</th>
<th>SEC</th>
<th>IC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who conducts investigations</td>
<td>BSP</td>
<td>PDIC</td>
<td>SEC</td>
<td>Insurance Commissioner or any designated officer who is empowered to administer oaths and affirmations</td>
</tr>
<tr>
<td>Who are required to assist in investigations</td>
<td>Authorised banks and other financial institutions under BSP supervision, and any person whose testimony is relevant to the investigation</td>
<td>Insured banks and any person whose testimony is relevant to the investigation</td>
<td>Corporations, partnerships and associations, and any person whose testimony is relevant to the investigation</td>
<td>Insurance and pre-need companies, and any person whose testimony is relevant to the investigation</td>
</tr>
<tr>
<td>Require production of records and documents</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Require a party to answer questions or provide information</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Conduct interviews</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Conduct searches at premises</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Statutory power to compel production of evidence and/or attendance of witnesses</td>
<td>Can only compel production of evidence</td>
<td>Can only compel production of evidence</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Consequences of non-compliance with the above investigation requirements</td>
<td>Contempt of court, if the BSP goes to court</td>
<td>Administrative fine</td>
<td>Contempt of the SEC</td>
<td>Contempt of the IC</td>
</tr>
<tr>
<td></td>
<td>If there is an administrative offence as determined by the BSP, the penalty is a fine and/or suspension of certain privileges</td>
<td>If there is an administrative offence as determined by the SEC, the penalty is a fine and/or suspension of certain privileges</td>
<td>If there is a criminal offence as determined by the court, the penalty is a fine and/or imprisonment</td>
<td>If there is a criminal offence as determined by the IC, the penalty is a fine and/or suspension or removal of directors, officers or agents of the insurance or pre-need company</td>
</tr>
<tr>
<td></td>
<td>If there is a criminal offence as determined by the court, the penalty is a fine and/or imprisonment</td>
<td></td>
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<td></td>
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phILIPPInES
6. ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?

No reports or other papers relevant to the BSP’s examinations of banking and quasi-banking institutions should be made public, except insofar as such publicity is: (a) incidental to the proceedings authorised under the New Central Bank Act; or (b) is necessary for the prosecution of violations in connection with the business of such institutions.

PDIC personnel are prohibited from revealing any information relating to the condition or business of any bank. The only exception is under an order of a court or when such information is given to the board of directors or the President of the PDIC, the Congress of the Philippines, any government agency authorised by law, or to any person authorised by any of the aforementioned in writing to receive such information.

Under the Corporation Code, all interrogatories issued by the SEC and the answers thereto, and the results of any examination made by the SEC of the operations, books and records of any corporation are to be kept strictly confidential. The only exception is where the law requires the same to be made public or where it is necessary to present such interrogatories, answers or results as evidence before any court.

On the other hand, under the Securities Regulation Code, all information filed with the SEC is generally available to the public, save for trade secrets or processes. However, any person filing or disclosing information (such as in the course of investigations) may make a written objection to the public disclosure of such information. If the SEC sustains such objection, the information in question will be treated as confidential.

An individual or institution under investigation is generally required to keep the fact of the investigation and information disclosed to them during the investigation confidential.

7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCrimINATION AND LEGAL PROFESSIONAL PRIVILEGE?

Persons required to attend interviews with the regulatory bodies may be accompanied by legal counsel.

Under the Constitution of the Philippines, any person under investigation for the commission of an offence must be informed of their right to remain silent and to have competent and independent counsel, preferably of their own choice. Privilege against self-incrimination and legal professional privilege are also recognised.

8. CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

Information obtained by regulatory bodies in the course of investigations can be used in any court proceedings.

9. WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?

The table below sets out certain actions that these bodies may take in exercising their regulatory functions:

<table>
<thead>
<tr>
<th>BODIES</th>
<th>ACTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSP</td>
<td>Conduct examinations of banks and other financial institutions under BSP supervision</td>
</tr>
<tr>
<td></td>
<td>Initiate administrative proceedings</td>
</tr>
<tr>
<td></td>
<td>Initiate criminal action</td>
</tr>
<tr>
<td></td>
<td>Prohibit an institution from doing business</td>
</tr>
<tr>
<td></td>
<td>Place an institution under conservatorship (a stage prior to receivership where the institution’s operations are supervised)</td>
</tr>
<tr>
<td></td>
<td>Place an institution under receivership and order liquidation if necessary</td>
</tr>
<tr>
<td>PDIC</td>
<td>Conduct examinations of member banks</td>
</tr>
<tr>
<td></td>
<td>Initiate corrective action</td>
</tr>
<tr>
<td></td>
<td>Act as a receiver of member banks’ assets</td>
</tr>
<tr>
<td>SEC</td>
<td>Conduct investigations</td>
</tr>
<tr>
<td></td>
<td>Initiate administrative proceedings</td>
</tr>
<tr>
<td></td>
<td>Issue cease-and-desist orders</td>
</tr>
<tr>
<td></td>
<td>Initiate criminal action</td>
</tr>
<tr>
<td></td>
<td>Dissolve corporations, partnerships or associations</td>
</tr>
<tr>
<td>IC</td>
<td>Conduct investigations</td>
</tr>
<tr>
<td></td>
<td>Initiate administrative proceedings</td>
</tr>
<tr>
<td></td>
<td>Issue writs of execution of the decision of the Insurance Commissioner</td>
</tr>
<tr>
<td></td>
<td>Initiate criminal action</td>
</tr>
</tbody>
</table>

10. WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?

The following sanctions may be imposed:

<table>
<thead>
<tr>
<th>BODIES</th>
<th>ACTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSP</td>
<td>Imposition of a fine</td>
</tr>
<tr>
<td></td>
<td>Suspension of rediscounting privileges or access to BSP credit facilities</td>
</tr>
<tr>
<td></td>
<td>Suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments</td>
</tr>
<tr>
<td></td>
<td>Suspension of interbank clearing privileges</td>
</tr>
<tr>
<td></td>
<td>Revocation of licence</td>
</tr>
<tr>
<td></td>
<td>Suspension or removal of director or officer responsible for the violation</td>
</tr>
<tr>
<td></td>
<td>Placing an institution under conservatorship</td>
</tr>
<tr>
<td></td>
<td>Placing an institution under receivership and ordering liquidation</td>
</tr>
</tbody>
</table>
11. **IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?**

Yes, it is possible to enter into a settlement to resolve any enforcement action taken by the regulatory bodies.

12. **ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?**

Final enforcement orders or resolutions of the BSP, the PDIC, the SEC and the IC may be appealed to the Court of Appeals and then to the Supreme Court.

13. **IS SECURITIES AND FUTURES MARKET MISCONDUCT (EG, INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENTION?**

Under the Securities Regulation Code, securities and futures market misconduct is actionable by both criminal and civil proceedings. An individual or institution can be subject to both criminal and civil proceedings over the same misconduct.

14. **WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?**

Investors can file civil action under the following provisions of the Securities Regulation Code:

- Section 56 (for a false registration statement);
- Section 57 (for a false prospectus, false communications and reports);
- Section 58 (for fraud in connection with securities transactions);
- Section 59 (for manipulation of securities prices);
- Section 60 (for fraud with regards to commodity futures contracts and pre-need plans); and
- Section 61 (for insider dealing).

15. **DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?**

The police may be requested by the regulatory bodies to assist in investigations.

The SEC, in particular, is expressly authorised to enlist the aid and support of all enforcement agencies of the Philippine government, civil or military, in the exercise of its powers and functions under the Securities Regulation Code.

16. **HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?**

The BSP has presented a proposal on the minimum ground rules for sharing of information with countries where Philippine banks have branches. In addition, the BSP has a bilateral agreement with Bank Negara Malaysia, pursuant to which the two central banks have agreed to settle in US Dollars the net financial claims between the Philippines and Malaysia arising from exports and imports of goods over a 2-month period.

The SEC has bilateral agreements with its counterparts in Indonesia and Hong Kong. It is also listed as a member in Appendix B to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of the International Organisation of Securities Commissions (IOSCO MMOU). This means that the SEC has committed to seeking the legal authority necessary to enable it to become a full signatory to the IOSCO MMOU. Under the Securities Regulation Code, the SEC may provide assistance, including the disclosure of information filed with or transmitted to the SEC, to an enforcement authority of a foreign country whose laws grant reciprocal assistance to the Philippines.

Mutual assistance between jurisdictions is encouraged under the Anti-Money Laundering Act.

The Association of Southeast Asian Nations (of which the Philippines is a member) is in continuing discussions with China, Japan and Korea, through their respective regulatory bodies, in pursuing the agenda for financial integration in the region. Such financial integration contemplates more liberalised capital account regimes and inter-linked capital markets.

17. **WHICH REGULATORY BODIES ARE EMPowered TO INvEstIGATE AND COMBAt CORRUPTION, TERRORIST FINANCING AND MONEY LauNDERING WITHIN THE FINANCIAL SERVICES INDUSTRy?**

The Anti-Money Laundering Council (AMLC) has been established to implement the Anti-Money Laundering Act and is the regulatory body empowered to investigate and combat terrorist financing and money laundering within the financial services industry. Its members include the Governor of the BSP (as chairman), the Commissioner of the IC and the Chairman of the SEC.

Combating corruption is also part of the mandate of the AMLC, to the extent that such corruption constitutes a money laundering offence. Otherwise, the BSP, the PDIC, the SEC and the IC are each involved in combating corruption in the financial services industry.
18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/ NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORISATION APPLICATION PROCESS?

There is an implied requirement, particularly in respect of a banking institution, that its incorporators and subscribers, as well as its directors and officers, must be persons of integrity and of good standing in the business community and must not have been convicted of any crime involving moral turpitude. Any information to the contrary must be disclosed to the BSP or the relevant regulator during the licence or authorisation application process. Otherwise, the incorporators would be guilty of fraud, which could result in the eventual cancellation of the licence by the regulator. Under a presidential decree, the SEC can even revoke the registration of a corporation found guilty of “fraud in procuring its certificate of registration”.

19. IS A FINANCIAL INSTITUTION IN THE PHILIPPINES UNDER ANY OBLIGATION TO REPORT TO THE PHILIPPINES REGULATOR(S) ANY MISCONDUCT/NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

A financial institution, particularly in the banking sector, has the obligation to report to the regulator: (a) crimes involving destruction or loss of its property, when the amount involved in each crime is 20,000 pesos or more; (b) crimes committed by its personnel, regardless of the amount involved; and (c) incidents involving material loss, destruction or damage to its property, other than arising from a crime, when the amount involved per incident is 100,000 pesos or more. The regulators have an interest in finding out whether the institution is engaging in unsound and unsafe business practices that could prejudice its customers or the public in general.

20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO "WHISTLE-BLOW" OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

Under the Anti-Money Laundering Act, all institutions covered by the Act (entities supervised by the BSP, the SEC and the IC) are required to report to the AMLC all transactions covered by the Act, as well as suspicious transactions.

The IC encourages actuaries and auditors of an insurance or a pre-need company to report any information involving the financial situation of such company, or to disclose to the IC matters that may materially increase the risk assumed by such company.

Brokers are required by the Securities Regulation Code to report material weaknesses in internal controls or material inadequacies in the practices and procedures for safeguarding securities.

The BSP, the SEC, the IC and the PDIC also have various reporting requirements concerning the operations of the entities under their supervision.

21. HOW ARE HEDGE FUNDS REGULATED?

There are no regulations specifically relating to hedge funds. However, interests in hedge funds are securities which, if offered within the Philippines, will be subject to the registration requirements under the Securities Regulation Code, unless they are sold to “qualified buyers” within the Philippines, in which case the sale will be deemed an “exempt transaction” subject only to post-sale notification to the SEC.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

The BSP will continue to encourage mergers and consolidations between banks and other financial institutions. Moreover, the BSP will be issuing anew licences to qualified foreign banks, in view of a recent legislation allowing them to establish branches or form wholly owned subsidiaries in the Philippines. There will also be more coordination and consultation among the BSP, the IC and the SEC in relation to the supervision of their respective constituent entities and institutions, with a view to fostering transparency in transactions and enhancing accountability of corporate officers and management.
1. WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN SINGAPORE?

The financial services industry in Singapore is governed by three main institutions:
- Monetary Authority of Singapore (MAS);
- Singapore Exchange Limited (SGX); and
- Securities Industry Council (SIC).

2. WHAT DOES EACH OF THESE BODIES REGULATE?

MAS
The MAS is the central bank of Singapore and the integrated regulator and supervisor of financial institutions in Singapore.

The primary roles of the MAS include:
- implementing monetary and exchange rate policies;
- issuing currency;
- acting as banker to, and financial agent of, the Singapore government;
- providing the infrastructure for and overseeing inter-bank payment systems;
- establishing rules for financial institutions which are implemented through legislation, regulations, directions and notices;
- supervising the banking, insurance, securities and futures industries;
- managing Singapore’s official foreign reserves;
- issuing government securities; and
- developing strategies in partnership with the private sector to promote Singapore as an international financial centre.

SGX
The SGX is Asia Pacific’s first demutualised and integrated securities and derivatives exchange. Its members include derivatives trading and securities trading organisations (members). The SGX operates the securities and derivatives exchange and the respective clearing houses and securities depository. The SGX performs all steps in the value chain of businesses – order routing, trading, matching, clearing, settlement and depository functions.

The SGX is responsible for:
- regulating the stock market;
- approving applications for listing;
- the provision and administration of listing rules of the SGX (Listing Rules);
- supervising the admission of members;
- ensuring compliance by listed companies with the Listing Rules and corporate disclosure policies;
- market surveillance and risk management for the clearing of securities and derivatives; and
- overseeing the capital requirements of brokers and investigating brokers as and when it deems necessary.

SIC
The SIC is an advisory body that assists the Minister of Finance on all matters relating to the securities industry. The SIC is a non-statutory body consisting of representatives from the MAS, private and public sectors and such persons as the Minister may appoint. The roles of the SIC are to:
- administer and enforce the Singapore Code on Takeovers and Mergers (Takeover Code);
- supervise the application of the Takeover Code where a takeover or merger occurs;
- investigate any dealing in securities connected with a takeover or merger transaction;
- issue guidance notes on the interpretation and application of the Takeover Code and lay down the practice to be followed by parties in a takeover or merger; and
- review takeover rules and practices periodically and recommend changes.

3. WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN SINGAPORE?

The primary financial services legislation and regulations are:
- the Banking Act, which provides the regulatory framework for banks and merchant banks (including licensing requirements) in the conduct of their businesses;
the Securities and Futures Act (SFA), which is the main legislation governing the securities and futures industry;

- the Financial Advisers Act (FAA), which regulates the activities of companies and individuals providing financial advisory services such as advice relating to corporate finance, investment products, the marketing of collective investment schemes and the arranging of any contract of insurance in respect of life policies (other than a contract of reinsurance);

- the Insurance Act, which regulates the activities of insurers and sets out registration and licensing requirements; and

- the Trust Companies Act, which regulates the establishment and licensing of trust companies.

As part of its remit as regulator and supervisor of the financial services sector, the MAS periodically issues subsidiary legislation, codes (including the Takeover Code and the Code on Collective Investment Schemes (CIS Code)), directions, practice notes and circulars regulating each category of activities set out above. It also regularly publishes guidelines to encourage best practices among financial institutions.

Companies listed on the SGX and members and registered persons of the SGX have continuous obligations to comply with the various rules promulgated by the SGX (SGX Rules). The SGX has issued various rulebooks governing the listing, clearing, trading and depository services that the industry needs to comply with. The rulebooks are constantly updated and revised to keep pace with market developments.

4. DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?

The regulatory bodies governing the financial services industry do not have the same powers of enforcement.

The MAS’s powers of enforcement are set out under the legislation that it administers. It may take out regulatory and enforcement actions for breaches of legislation coming under its purview, which include the SFA, the FAA, the Insurance Act and the Corruption, Drug Trafficking and Other Serious Offences (Confiscation of Benefits) Act (CDSA).

The SGX is tasked with interpreting, administering and enforcing the SGX Rules (including the Listing Rules). The SGX can take action against its members, persons registered with it and listed companies which have failed to comply with the SGX Rules, by-laws or other requirements.

The SIC administers and enforces the Takeover Code and has the power to conduct proceedings if any party has failed to adhere to the Takeover Code in a takeover or merger involving public companies.

5. WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?

MAS

The scope of the investigative powers of the MAS is set out in the relevant statutes which it administers.

In overseeing and regulating the securities and futures industry, the MAS is empowered under the SFA to conduct any investigation it considers necessary or expedient for any of the following purposes:

- to exercise any of its powers or to perform any of its functions and duties under the SFA;

- to ensure compliance with the SFA or any written direction issued under the SFA; and

- to investigate an alleged or suspected contravention of any provision of the SFA or any written direction issued under the SFA.

During an investigation, the MAS may require a person who is being investigated to give reasonable assistance in connection with the investigation and, if necessary, appear before an officer of the MAS for examination under oath. The MAS officer may require the person being examined to answer any questions relevant to the investigation. A record may be made of the statements taken at the examination. A person who refuses or fails to comply with the MAS’s requests, without reasonable justification or excuse, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000, or imprisonment for up to 2 years, or both.

During an investigation, the MAS is also empowered to require any person to provide information or produce books relating to any matter under investigation. A warrant enabling the MAS to enter and search premises and also to take possession of any books may be obtained from a Magistrate, if the MAS has reasonable grounds to believe that a book has not been or will not be produced in compliance with a requirement imposed by the MAS.

The MAS has powers to inspect, under conditions of secrecy, the books of an approved exchange, a recognised market operator, an exempt market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, the holder of a capital markets services licence, an exempt person and a representative of the preceding entities. Any person who refuses or fails to provide the MAS with books for inspection without reasonable excuse shall be guilty of an offence and be liable on conviction to a fine not exceeding $50,000, or imprisonment for up to 2 years, or both.

SGX

The SGX may initiate investigations against its members, listed companies and their directors, employees and trading representatives, or persons registered with it, for alleged misconduct upon the following:

- a referral from the surveillance or other departments within the SGX;

- a complaint;

- a referral from external bodies; or

- on its own accord.

When the SGX conducts an investigation, it may require its member, the listed company concerned, or any of the directors, trading representatives, officers, employees and agents of the member or the listed company, or a registered person, to render all assistance as it requires, at its premises or elsewhere, and provide information, books and records which may be relevant to the investigation. Amongst other things, the SGX may suspend or terminate a person’s direct access to the SGX’s electronic trading system (or direct a member or listed company to do so), where the person has failed to assist the SGX with an investigation.
SIC
Where the SIC has reason to believe that any party connected with a takeover offer is in breach of the provisions of the Takeover Code or has committed acts of misconduct in relation to a takeover offer, the SIC may inquire into the suspected breach or misconduct. The SIC also has the power, in the exercise of its functions, to advise the Minister of Finance on all matters relating to the securities industry, and to inquire into any matter or thing related to the securities industry. In both these respects, the SIC may summon any person to give evidence under oath or affirmation, or to produce any document or material necessary for the purpose of the inquiry.

Failure to assist in investigations may result in the SIC taking steps to suspend the non-cooperative party’s rights to the facilities of the securities market, which may (in the case of advisers) also include the right to take on Takeover Code related work.

6. ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?

There are no provisions requiring investigations by the MAS or information disclosed during the course of such investigations to be kept confidential. In practice, investigations and examinations by the MAS are usually conducted in private. Nevertheless the MAS has overriding discretion to publish such information where it considers that doing so would be in the public interest. Such information may relate to:

- any civil or criminal proceedings brought under the SFA against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or
- any disciplinary proceedings brought against any person by the MAS and the outcome of such proceedings.

The SFA and the FAA also provide that any written report produced during the course of an inspection or investigation, which has been provided by the MAS to the person subject to the inspection/investigation, shall not be disclosed by the person (or, if the person is a corporation, by any of its officers or auditors) to any other person except officers or auditors of the inspected person, or such other persons as the MAS approves in writing. Any person who discloses such confidential information shall be guilty of an offence and be liable on conviction to a fine not exceeding S$50,000, or imprisonment for up to 2 years, or both.

There are no express provisions maintaining the confidentiality of information disclosed by parties during SGX investigations. The SGX may circulate to its members the decisions of its Disciplinary Committee and notify the public of disciplinary actions taken against its members, registered persons and listed companies. In addition, the SGX is entitled to publish information including the particulars of the charge, the underlying facts, the findings and decision of the Disciplinary Committee, and the basis of the findings.

The Takeover Code and the SFA are silent on whether the SIC should keep its investigations or information discovered confidential. However, the SIC occasionally issues public statements on the conduct of parties in a takeover or merger.

7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCrimINATION AND LEGal PROFESSIONAL PRIVILEGE?

A person responding to a MAS investigation is not excused from disclosing information on the ground that such disclosure might lead to self-incrimination. During an investigation and examination, the MAS has the power to determine who may be present, which may or may not include legal advisers.

A member, a listed company and their directors, trading representatives, officers, employees and agents, and a registered person must give the SGX access to all information, books and records requested by the SGX. The SGX Rules do not explicitly afford any protection against self-incrimination to such persons when responding to the SGX’s investigation. The SGX Rules are also silent on the right to legal representation at the investigation stage. However, at a SGX disciplinary hearing, the SGX and the alleged wrongdoer have the right to legal representation.

SIC hearings are usually informal. While the alleged offender has the right to call witnesses and consult legal advisers during the hearings, the legal advisers may not examine or cross-examine witnesses or answer any questions on behalf of the alleged offender. The Takeover Code does not excuse one from disclosing information on the ground that such disclosure might lead to self-incrimination.

Generally speaking, legal professional privilege may be claimed by alleged offenders and their legal advisers in investigations conducted by the MAS, the SGX and the SIC, and they will not be obliged to disclose or produce any privileged communications or documents.

8. CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

The SFA does not explicitly allow the MAS to use the information it has obtained for any other purposes. Where any statements made may incriminate the maker of the statement (and the maker of the statement claims the right against self-incrimination), the statement will not be admissible as evidence against him/her/it in criminal proceedings (unless, among other things, the statement made is false or misleading), but can still be used as evidence in civil proceedings.

Where an investigation by the SGX reveals a possible violation of the law, the SGX will refer the matter to the relevant authority for further action. Information obtained by the SGX may be provided to the relevant authority to aid in its investigations.

If the SIC finds evidence to suggest that a criminal offence has been committed, the matter may be referred to the relevant authority.

9. WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?

The MAS may take the following actions in exercising its regulatory functions:

- appoint an adviser to a financial institution (eg, an approved exchange, a recognised market operator, or a clearing house) where the financial institution is or is likely to become insolvent,
has contravened the SFA or other relevant regulations, has failed
to comply with any condition relating to its authorisation as a
regulated body, or where it is in the public interest to do so;
- take whatever action it considers necessary to maintain or
restore orderly trading or the safe and efficient operation of a
clearing facility, in a case of emergency;
- remove officers of a financial institution where the financial
institution has wilfully or negligently contravened a regulatory
obligation;
- order a financial institution to cease its regulated activity, or
cease trading in particular financial products in the case of an
approved exchange or recognised market operator, where the
financial institution has failed to comply with any regulatory
obligation;
- make regulations, issue directions and impose conditions to
further its actions; and
- apply to the court for action against any person who has
committed an offence under the SFA or has contravened any
condition or restriction of a licence, or the Listing Rules.

Under the Listing Rules, the SGX may take the following actions in
exercising its regulatory functions:
- suspend or restrict trading in any or all listed or quoted securities
or futures contracts;
- impose limitations on or prohibit a member from dealing;
- take disciplinary action against a director or key executive officer
of an issuer under the Listing Rules, where the director or key
executive officer has wilfully or negligently contravened any relevant laws,
rules or regulations, including but not limited to the Listing Rules;
- take disciplinary action against a member such as charging the
member before the SGX Disciplinary Committee; and
- take disciplinary action against persons registered with it.

Under the SFA and the Takeover Code, the SIC may take the
following actions in exercising its regulatory functions:
- enquire into any matter or thing related to the securities
industry;
- investigate any dealing in securities connected with a takeover
or merger transaction;
- require an offender to appear before a council for a hearing;
- impose non-statutory sanctions for breaches of the Takeover
Code; and
- refer any evidence of a criminal offence under the Companies
Act, the SFA or common law to the appropriate authority.

10. WHAT DISCIPLINARY SANCTIONS MAY THESE
REGULATORY BODIES IMPOSE?

The MAS has wide powers under the SFA to take the necessary
action and impose sanctions where there has been a
contravention of a provision of the SFA. In particular, the MAS may
take civil penalty enforcement action against financial institutions
for breaches of the SFA or the CDSA. The MAS may also
reprimand a person found guilty of misconduct, if it is in the public
interest, or if it is necessary for the protection of investors.

The SGX may bring disciplinary proceedings against its members,
their directors, employees and trading representatives, or persons
registered with it. The Disciplinary Committee may impose a
reprimand, a fine not exceeding S$250,000, or order the
suspension or expulsion of a member or trading representative.
The SGX may also at any time order the suspension or delisting of
a listed company, and may take disciplinary action against its
directors or key executive officers, including publishing the
identities of the relevant individuals and information about their
contraventions.

The SIC may have recourse to private reprimand, public censure
and/or director disqualification. In the event that it determines
there is a breach of the Takeover Code, it may deprive the offender
temporarily or permanently of its ability to enjoy the facilities of
the securities market. The SIC is also empowered to order
payment to shareholders of such amount it considers to be just
and reasonable, so as to ensure that such shareholders receive
what they would have been entitled to receive if the relevant rule in
the Takeover Code had been complied with.

11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO
RESOLVE ANY ENFORCEMENT ACTION TAKEN BY
ANY OF THESE REGULATORY BODIES?

The MAS is empowered to enter into an agreement with any
person for the person to pay a civil penalty in respect of any
prohibited activity in contravention of the SFA, with or without
admission of liability. In accordance with the SFA, the civil penalty
which the MAS may agree to should not exceed the monetary
limits of a civil penalty which a court is empowered to impose in
the event of a finding of such prohibited activity.

The SGX may make an offer of composition in certain
circumstances. This involves the payment of a specified sum to
the SGX and may include the fulfillment of any accompanying
terms that the SGX may prescribe. Upon acceptance and
compliance with the offer of composition, no further proceedings
will be taken by the SGX.

The Takeover Code does not contain any express provisions on
settlement. In practice, however, there is nothing precluding
parties from initiating settlement discussions with the SIC.

12. ARE THERE PROVISIONS FOR PERSONS TO
APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY
THE REGULATORY BODIES AGAINST THEM?

Appeals from decisions of the MAS may be made to the Minister
of Finance, who may confirm, vary or reverse the decisions, or give
such directions as he/she sees fit. The decision of the Minister
shall be final.

Appeals in relation to decisions of the SGX may be made to the
SGX Appeals Committee, the decision of which is final.

The SIC’s decisions are not open to appeal.

13. IS SECURITIES AND FUTURES MARKET
MISCONDUCT (EG, INSIDER DEALING, MARKET
MANIPULATION ETC) A CRIMINAL OFFENCE OR
A CIVIL CONTRAVENTION?

Prohibited activities such as insider dealing, false trading, price
rigging, disclosure of information about prohibited transactions,
disclosure of false or misleading information inducing transactions
and stock market manipulation under the SFA (Market
Misconduct) can be dealt with either as a criminal offence or by
way of a civil action. As the extent of the contravention may not
always initially be clear, cases may be switched from a criminal to
a civil track (and vice versa), and the SFA provides for the transfer of information between the MAS and the Commercial Affairs Department, which is responsible for carrying out criminal investigations and prosecutions.

The MAS, with the consent of the Public Prosecutor, may bring a civil action in court against a person who is suspected of Market Misconduct, to seek an order for a civil penalty. The court can impose a civil penalty not exceeding 3 times the amount of the profit gained or loss avoided as a result of the contravention, or $50,000 (in the case of an individual) or $100,000 (in the case of a corporation), whichever is greater.

If the Market Misconduct does not result in the person gaining a profit or avoiding a loss, the court may order the payment of a civil penalty of $50,000 to $2 million.

Where Market Misconduct is dealt with as a criminal offence, this may upon conviction result in a fine not exceeding $250,000, or imprisonment for up to 7 years, or both.

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?
Investors can bring civil proceedings against persons making offers of shares and debentures accompanied by a prospectus or profile statement, or against an issuer or underwriter named in the prospectus or profile statement, if the investors have suffered loss or damage as a result of false or misleading statements or omissions in the prospectus or profile statement. If the offers are made by a corporation, each director of the corporation can be made liable.

The SFA also specifically provides that affected investors can seek compensation from parties found to have engaged in Market Misconduct for losses arising out of such Market Misconduct.

15. DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?
Upon the issue of a warrant, a person who fails to produce or deliver documents required by a regulatory body during an investigation can be arrested and the relevant documents can be seized by the police.

16. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?
The SFA authorises the MAS to provide assistance to its foreign counterparts in their investigations and enforcement actions. In this regard, the MAS may assist in transmitting relevant information in its possession and can require a person to furnish the requisite information to it or directly to the foreign regulator.

The MAS is empowered to enter into treaties, conventions, memorandum of understanding (MOUs) or exchanges of letters with foreign regulators relating to the securities and futures industry. The SFA authorises the MAS to make regulations to give effect to such treaties, conventions, MOUs or exchanges of letters.

The MAS is a signatory to the International Organisation of Securities Commissions’ Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. The MAS joined the Islamic Financial Services Board in 2003 as an observer member and became a full member in 2005.

The MAS has signed a number of MOUs with foreign regulators. In 2002, the MAS signed an MOU with the Office of the Commissioner of Insurance in Hong Kong. In 2005, the MAS signed an MOU with the China Insurance Regulatory Commission to facilitate cooperation in training and exchange programmes relating to the insurance industry. In 2011, in light of the global financial downturn, the MAS signed a supplemental MOU with the China Banking Regulatory Commission to provide for cooperation on crisis management. In 2012, the MAS signed an MOU with the European Securities and Markets Authority to cooperate in the supervision of credit rating agencies. More recently, the MAS signed an MOU with the People’s Bank of China on Renminbi Business Cooperation in 2013, and an MOU with the Autoriti Monetari Brunei Darussalam on bilateral cooperation in April 2014.

The SGX interacts with foreign exchanges by way of MOUs regarding the sharing of information and cooperation and by forging alliances. The SGX is a member of the Global Association of Central Counterparties (CCP12), which is one of the world’s principal clearing organisations. The SGX has also collaborated with the Tokyo Commodity Exchange on the launch of the Middle Eastern Crude Oil futures on the SGX.

17. WHICH REGULATORY BODIES ARE EMPowered TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?
The Prevention of Corruption Act and the Penal Code prohibit corrupt transactions, including corruption in the financial services industry. The Corrupt Practices Investigation Bureau is empowered to conduct investigations into such offences, and the Public Prosecutor can authorise such investigations based on reasonable grounds for suspecting that an offence has been committed.

The CDSA and the Terrorism (Suppression of Financing) Act (TSFA) provide for the reporting by individuals and corporations to the Public Prosecutor of transactions suspected of being connected with money laundering or terrorist financing.

The Public Prosecutor has powers under the law to apply to the court for orders to search, restrain, seize or forfeit:
- property owned or controlled by or on behalf of any terrorist or terrorist entity, or property that has been used or will be used to facilitate or carry out any terrorist act under the TSFA; and
- property related to a money laundering offence under the CDSA.

The MAS is responsible for combating money laundering and has issued various notices to each of the market sectors that it regulates, including notices to banks and financial institutions to implement internal policies, procedures and controls to meet their legal obligations.

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/ NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORIZATION APPLICATION PROCESS?
A financial institution which applies for a capital markets services licence or a financial adviser licence, or seeks approval as an approved exchange or holding company or designated clearing house, must satisfy “fit and proper” requirements for the proposed activity, which include criteria relating to “honesty, integrity and reputation”.

The applicant must provide supporting documents and all relevant particulars of matters which may affect the assessment of the
Under the Companies Act, professional advisors, such as auditors, have a duty to report any financial irregularities or fraud discovered in the course of the performance of their duties – see also Question 19 above.

21. HOW ARE HEDGE FUNDS REGULATED?

Hedge funds in Singapore are regulated under the SFA and the FAA and are supervised by the MAS. They can generally be divided into on-shore and off-shore hedge funds.

For onshore hedge funds, pursuant to regulations which came into operation in April 2012, fund managers must be registered or licenced with the MAS, depending on various factors such as the nature of investors and the amount of the assets under management. Fund managers with less than 30 qualified investors are exempt from licensing requirements in Singapore.

For off-shore hedge funds, the funds have to be licensed or regulated in accordance with requirements of the off-shore jurisdiction and must be fit and proper.

The CIS Code sets out best practices on the management, operation and marketing of funds that managers and trustees are expected to observe.

The CIS Code divides hedge funds into 3 main categories: (a) single hedge funds; (b) Funds-of-Hedge-Funds (FOHFs); and (c) capital-guaranteed single hedge funds and FOHFs. Single hedge funds should be offered with a minimum subscription of S$100,000 per investor. A FOHF should be offered with a minimum subscription of S$20,000 per investor.

22. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

Yes, obligations are imposed by various statutes and subsidiary legislation on persons to “whistle-blow” or disclose financial services-related wrongdoing:

Pursuant to the TSFA, every person in Singapore who has information which he/she knows or believes may be of assistance in preventing a terrorism financing offence from being committed is required to furnish such information to the police. Failure to do so attracts a fine or imprisonment or both.

The CDSA requires a person who has reasonable grounds for suspecting that any property is used for drug trafficking or criminal conduct, where the information became known to the person through his/her employment, to disclose the knowledge to the relevant authority. Contravention of this requirement attracts a fine.

The MAS carries out regular reviews of the regulatory regime for the financial services industry to ensure that its rules and legislation remain sound and responsive to the changing needs of the industry. For example, in February 2014, the MAS and the SGX together released a joint consultation paper setting out proposals to strengthen the securities market in Singapore. This resulted in reforms that came into place in August 2014 aimed at curbing excessive speculation in the stock market. One of the key reforms involved requiring companies listed on the SGX to ensure that their shares are worth at least S$0.20 each, which is intended to address risks of low-priced securities being more susceptible to excessive speculation and market manipulation. The reform will affect about 220 of the 600 plus companies listed on the SGX’s main board. A transitional period of 12 months will be given to affected listed companies to undertake corporate actions to meet the new requirement.

In March 2014, the MAS announced that it would regulate virtual currency intermediaries in Singapore to address potential money laundering and terrorist financing risks. In the same month, the MAS published a second consultation paper on the details of the proposed revisions to the Risk-Based Capital framework for insurers.

In April 2014, the MAS, in conjunction with the Ministry of Finance Singapore and authorities from Australia, Korea, New Zealand, Philippines and Thailand, released a joint consultation paper on the proposed rules and arrangements that will govern the operation of the Asia Region Funds Passport. Upon implementation, the Asia Region Funds Passport will enable fund managers operating in a passport member economy to offer their funds in other passport member economies under a streamlined authorisation process.
1. WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN TAIWAN?

The main bodies are:

- Financial Supervisory Commission (FSC), under which 4 bureaux have been established, namely the Banking Bureau (BB), the Securities and Futures Bureau (SFB), the Insurance Bureau (IB) and the Financial Examination Bureau (EB) (collectively known as Bureaux). Each of the BB, SFB and IB is separately responsible for regulating the banking, securities and insurance industries. The EB is in charge of financial inspection and audits of financial institutions regulated by the FSC;
- Central Bank of the Republic of China (Taiwan) (CBC);
- Taiwan Stock Exchange Corporation (TSEC);
- Gre Tai Securities Market (GTSM); and
- Taiwan Futures Exchange Corporation (TFEC).

2. WHAT DOES EACH OF THESE BODIES REGULATE?

The FSC is an independent primary regulatory authority governing the financial services industry in Taiwan, which determines financial policy, drafts laws and rules with regard to the financial industry, conducts financial examinations and supervises financial institutions.

While the FSC issues regulations relating to financial services generally, the Bureaux are responsible for administering the regulations relating to separate financial services sectors. In this regard, the BB regulates banking and bill finance; the SFB, together with, the TSEC and the TFEC, oversee all activities in the securities and futures market; the IB supervises the insurance business and the EB is responsible for conducting financial investigations with a view to maintaining market order and the protection of investors.

The FSC also oversees the Taiwan Depository and Clearing Corporation and all the activities in the GTSM, ie, the over-the-counter (OTC) market in Taiwan.

The CBC, the government bank performing the functions of a central bank, regulates monetary and credit policies. It also manages official foreign exchange reserves, issues currency, adjusts reserve ratios and examines banks.

The TSEC regulates trading on the Taiwan Stock Exchange and companies listed on the Taiwan Stock Exchange. The GTSM regulates the trading of the OTC securities market and the TFEC regulates trading on the Taiwan Futures Exchange.

3. WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN TAIWAN?

The Company Act sets forth the general rules of structure and operation for all incorporated entities including financial institutions such as banks, securities houses and insurance corporations.

The Central Bank of the Republic of China (Taiwan) Act (CBCA) sets out general regulations as well as the powers and functions of the CBC. In accordance with the CBCA, the CBC issues compliance rules to participants in the financial services market.

The Financial Supervisory Commission Organisation Act sets out the legal basis for the organisation of the Bureaux under the FSC.

The Banking Law (BL) provides guidelines for conducting banking business, including the incorporation and dissolution of banks and the regulation of various banks.

The Insurance Law (IL) regulates the terms and conditions of insurance contracts and the administration of insurance companies.

The Securities and Exchange Act (SEA) regulates securities firms, the stock exchange and the offering, issuing, private placement and trading of securities. Similarly, the Futures Trading Law (FL) provides guidelines for the futures exchange market and futures enterprises.

The Operation Rules of the Taiwan Stock Exchange Corporation, the Operation Rules of the Taiwan Futures Exchange Corporation and the GreTai Securities Market Rules Governing Securities Trading on the GTSM (Operation Rules) provide the rules relating to the operations of the stock exchange, futures exchange and OTC market respectively.

The TSEC, the TFEC and the GTSM also issue a variety of implementation regulations.
4. **DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?**

No. The CBC has the authority to examine financial institutions to ensure their compliance with the regulations issued by it. The SFB takes action against stock market participants in relation to their illegal activities, the BB exercises its enforcement power over authorised banks for misconduct and the IB is responsible for taking enforcement action against insurance companies for their wrongdoing. The EB has extensive powers of investigation and is responsible for conducting regulatory audits and examinations over financial activities. The TSEC, the TFEC and the GTSM enforce rules relating to securities firms, futures commission merchants and clearing members.

5. **WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?**

The EB has extensive powers of investigation, including conducting regular or irregular examinations over financial activities. Generally, the Bureaux, the TSEC, the TFEC and the GTSM conduct investigations in specific situations described under the BL, the SEA, the IL, the FL and the Operation Rules. The following table sets out the powers of these regulatory bodies:

<table>
<thead>
<tr>
<th>POWERS</th>
<th>BB</th>
<th>SFB</th>
<th>IB</th>
<th>EB</th>
<th>TSEC, TFEC AND GTSM</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Who conducts investigations</strong></td>
<td>BB, professionals (eg, attorneys or accountants) appointed by the BB, authorised organisations or officials of local competent authorities which are directed by the BB to investigate</td>
<td>SFB or professionals appointed by the SFB</td>
<td>IB or any staff appointed by the IB</td>
<td>EB</td>
<td>TSEC/TFEC/GTSM</td>
</tr>
<tr>
<td><strong>Who are required to assist in investigations</strong></td>
<td>The responsible person or staff of the bank, or any other associated persons</td>
<td>The issuer, securities firms, futures commission merchants or any other associated persons</td>
<td>The responsible person or relevant staff of the corporation, or any other associated persons</td>
<td>The responsible person or staff of the financial institutions, or any other associated persons</td>
<td>The issuer, securities firms, futures commission merchants or any other associated persons</td>
</tr>
<tr>
<td><strong>Require production of records and documents</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Require a party to answer questions or provide information</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Conduct interviews</strong></td>
<td>No explicit authority to conduct interviews but the BB may request information from the responsible person or relevant staff of the corporation</td>
<td>No explicit authority to conduct interviews but the SFB may request information from the responsible person or relevant staff of the corporation</td>
<td>No explicit authority to conduct interviews but the IB may request information from the responsible person or relevant staff of the corporation</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>
If the regulatory bodies discover any misconduct involving criminal liability during an investigation, they can report to the prosecutor who can conduct a search of the premises of the suspected person, bank or corporation after obtaining a warrant from the court.

6.  **ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?**

The FSC provides guidelines requiring investigators to keep the information disclosed during the course of financial investigations confidential.

The TSEC, the TFEC and the GTSM are not governmental agencies and each of them has contractual relationships with the market participants. Therefore, they are subject to the general confidentiality obligations (if applicable) in law. In practice, they do not disclose any confidential information gathered through investigations unless required to do so, for example, by law or a court order.

7.  **ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCRIMINATION AND LEGAL PROFESSIONAL PRIVILEGE?**

The laws and regulations do not provide for the right to legal representation at interviews. However, it is unlikely to be prohibited.

Privilege against self-incrimination is available only in criminal proceedings and cannot be asserted when providing information during interviews with regulatory bodies, which are deemed to be part of administrative rather than criminal proceedings.

Communications with legal advisers and documents created upon the instructions of legal advisers are not subject to legal professional privilege during administrative investigations.

8.  **CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?**

Any information obtained by these regulatory bodies may be presented or used in court proceedings, depending upon the requirements of each procedure.
9. WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?

These regulatory bodies may take the following actions:

<table>
<thead>
<tr>
<th>BODIES</th>
<th>ACTIONS</th>
</tr>
</thead>
</table>
| BB     | - Prescribe corrective measures or issue an improvement order  
        - Partially suspend a corporation’s operations, or dissolve the corporation  
        - Order the dismissal of managerial officers or employees of a corporation  
        - Order the removal of directors or supervisors of a corporation, or prohibit the corporation from carrying out its activities  
        - Take any other necessary actions |
| SFB    | - Wholly or partially dissolve a corporation or revoke the corporation’s licence  
        - Wholly or partially suspend or terminate a corporation’s business  
        - Order the removal of a corporation’s directors, supervisors or managers  
        - Issue a reprimand |
| IB     | - Prescribe corrective measures or issue an improvement order  
        - Partially suspend a corporation’s operations, or dissolve the corporation  
        - Order the dismissal of managerial officers or employees of a corporation  
        - Order the removal of directors or supervisors of a corporation, or prohibit the corporation from carrying out its activities  
        - Take any other necessary actions |
| EB     | - Impose an administrative fine |
| TSEC/TFEC/GTSM | - Prescribe corrective measures or issue an improvement order  
                     - Wholly or partially suspend trading  
                     - Terminate the market usage contract |

10. WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?

If a regulatory body considers that the conduct of any company or individual does not meet the standard provided in the relevant laws and regulations, the regulatory body can impose the following sanctions:

<table>
<thead>
<tr>
<th>BODIES</th>
<th>ACTIONS</th>
</tr>
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</table>
| BB     | - Issue a warning and order a corporation to take rectification action  
        - Suspend or revoke the licence of a corporation or an individual  
        - Impose an administrative fine |
| SFB    | - Issue a warning and order a corporation to take rectification action  
        - Prohibit participation in the securities and futures market  
        - Suspend or revoke the licence of a corporation or an individual  
        - Impose an administrative fine |
| IB     | - Issue a warning and order a corporation to take rectification action  
        - Suspend or revoke the licence of a corporation or an individual  
        - Impose an administrative fine |
| EB     | - Impose an administrative fine |
| TSEC/TFEC/GTSM | - Issue a warning and order a corporation to take rectification action  
                        - Impose a default penalty under the agreement with the TSEC/TFEC/GTSM |
11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?

Under certain circumstances, securities firms, futures commission merchants, securities investment trust enterprises and securities investment consulting enterprises (collectively, Firms) may reach settlement with the FSC by entering into an administrative settlement agreement (Settlement).

According to the relevant regulations promulgated by the FSC, a Settlement may be sought where:

- the FSC finds that, after investigating the matter, it is not possible to ascertain the underlying facts or legal relationships on which the potential enforcement action is to be based;
- a Settlement may achieve the FSC’s administrative purpose; and
- a Settlement may resolve the disputes between the FSC and the Firm.

Before proceeding with negotiating a Settlement, the FSC should conduct an investigation into the facts or the legal relationships on which the potential enforcement action is to be based and the investigation period shall not be less than 30 days. The FSC should also take into consideration the following factors: (a) the legality and appropriateness of making mutual concessions with the Firm; (b) protection of public interests; and (c) the potential damages to be sustained by interested parties in the event of Settlement.

12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?

In general, an appeal against an administrative decision made by a governmental authority may be filed with the governmental authority at a higher level. Therefore, decisions made by the Bureaux may be appealed to the FSC, while decisions made by the FSC may be appealed to the Administrative Appeals Commission (AAC) under the Executive Yuan (ie, the cabinet).

Except for administrative cases that are subject to simplified administrative litigation proceedings, a party dissatisfied with a decision of the FSC may file with the AAC for an appeal and then appeal the AAC’s decision with the High Administrative Court (HAC) if the AAC’s decision is not in favour of such party. If the HAC finds against the party, then the party can further appeal to the Supreme Administrative Court for the highest court’s review.

The TSEC, the TFEC and the GTSM are not governmental agencies and each of them has contractual relationships with the market participants. Therefore, any dispute with the TSEC/TFEC/GTSM needs to be resolved through the civil court unless the parties agree to settle in advance.

13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (EG, INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENITION?

Securities and futures market misconduct, such as insider dealing and market manipulation, constitutes a criminal offence and also gives rise to civil liability. The FSC may actively co-operate with the prosecutor to investigate the misconduct. Persons engaging in market misconduct may, on conviction, be sentenced to imprisonment for a period of 3 to 10 years, and a fine of NT$10 million to NT$200 million. Where the amount gained from the misconduct is NT$100 million or more, a sentence of imprisonment for not less than 7 years may be imposed, as well as a fine of NT$25 million to NT$500 million.

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?

The SEA provides that bona fide buyers or sellers are entitled to seek compensation from persons who commit securities and futures market misconduct, eg, insider dealing or market manipulation. Market manipulation refers to the following:

- the offering of a quote on a centralised securities exchange market and failure to deliver or settle the transaction after accepting such quotation, where such omission affects the market order;
- conspiracy with other parties in a scheme where one party buys or sells designated securities at an agreed price and the other party sells or buys from the first party in the same transaction, with intent to inflate or deflate the price of the securities on the centralised securities exchange market;
- continuously buying at high prices or selling at low prices designated securities for his/her/its own account or under the names of other parties with intent to inflate or deflate the price of the securities on the centralised securities exchange market;
- continuously ordering or reporting a series of trades under his/her/its own account or under the names of other parties, and completing the corresponding transactions with the intent of creating an impression on the centralised securities exchange market of brisk trading in a particular security;
- spreading rumours or false information with intent to influence prices of designated securities traded on the centralised securities exchange market; or
- performing directly or indirectly any other manipulative acts to influence prices of designated securities traded on the centralised securities exchange market.

Investors who have been victimised by securities and futures market misconduct may file a civil action against an individual or institution. In general, the civil liability for market misconduct would be the actual damages sustained by such investors. However, in the case of insider dealing, a formula is explicitly set forth in the SEA for the assessment of damages and the civil liability may be increased by the court to up to triple the amount of the damages if the misconduct is deemed severe in nature.

The Securities and Futures Investors Protection Center may file class-action suits on behalf of investors who have been victimised by securities exploitation, such as false financial statements and prospectuses, insider dealing, or market manipulation. It can be authorised by more than 20 investors or traders to commence a civil action in its own name, on the condition that the subject matter of the claim involves injury to a majority of investors or traders.

15. DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?

The regulatory bodies usually transfer cases involving financial crimes to the offices of public prosecutors for investigation. Although the Criminal Procedure Act provides that policemen, military policemen, and persons authorised by law to exercise the duty and power of a judicial policeman in special matters have the duty and power to inquire into an alleged offence under the instruction and order of a public prosecutor, the investigators of the Investigation Bureau, Ministry of Justice (MJIB) most
frequently act as the judicial policemen who conduct the investigation of financial crimes. The Economic Crime Prevention Centre at the MJIB and the MJIB’s field stations have been involved in a lot of investigations of violations of bank laws and securities exchange laws, among others.

16. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?

The FSC co-operates with overseas regulators through various Memoranda of Understanding (MOUs). Such MOUs usually provide the essential arrangements for sharing information, accessing markets, protecting investors, assisting with each other’s bank examinations, exchanging staff, and meeting with each other on an ongoing basis.

As of December 2013, the FSC has signed 48 bilateral cooperation agreements and/or exchange of letters with foreign regulators. The FSC has also entered into several MOUs with the regulators in the PRC in relation to banking, securities and insurance respectively, laying the groundwork for interaction and cooperation on supervision between financial institutions in Taiwan and the PRC. In addition, the FSC is a member of the International Organisation of Securities Commissions (IOSCO) and a signatory to the IOSCO’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

17. WHICH REGULATORY BODIES ARE EMPOWERED TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

The EB has extensive powers to investigate over financial activities, while the Bureaux, TSEC, TFEC and GTSM are also empowered to conduct investigations over financial institutions under certain circumstances. They have a responsibility to report to the prosecutors any facts with regards to corruption, money laundering and terrorist financing within the financial services industry which are discovered during their investigations.

The Money Laundering Control Act (MLCA) requires financial institutions to report any “Suspicious Transactions” to the Money Laundering Prevention Centre at MJIB (Money Laundering Prevention Centre). The Money Laundering Prevention Centre will analyse such transactions, forward relevant information to the TSEC, and a signatory to the IOSCO’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. In addition, the FSC in practice has the power to require a financial institution to provide any such documents/information (including documents or information regarding the satisfaction of the qualification requirements as set out by the FSC). Such requirements generally include, among others, that such person shall not have committed or conducted certain offences or misconduct within a certain period of time. For financial institutions such as a bank or an insurance company, the qualification requirements for the “responsible person” also apply, under which a person shall not serve as a responsible person if there has been factual evidence showing that the person has engaged in, been involved in, dishonest or improper activities which indicate that he/she is unfit. In practice, a person, before serving as a responsible person of a financial institution, will be required to: (a) issue a declaration to the FSC specifying that he/she has met all the qualification requirements pursuant to applicable laws and regulations; or (b) provide necessary documents or information regarding the satisfaction of the qualification requirements to the FSC upon the FSC’s request.

In addition, the FSC in practice has the power to require a financial institution to provide any such documents/information (including without limitation, information about past misconduct/non-compliance by the institution and/or its employees) as the FSC may deem necessary during the licence/authorisation application process, even if the FSC’s rules or regulations do not expressly require such documents/information.

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORISATION APPLICATION PROCESS?

Local financial institutions are required to provide information about their past misconduct/non-compliance when they apply for certain licences/authorisation. For example, a local bank applying to establish a new branch shall provide the information that it has not been subject to any disciplinary action by the regulators within the previous year for violation of banking regulations (or that any violation has been corrected and confirmed by the regulators). A local securities firm applying to establish a new branch shall also provide the information that it has not been subject to any disciplinary action by the TSEC within the previous year.

Foreign financial institutions are also required to provide information about their past misconduct/non-compliance during their licence/authorisation application process. For example:

- Pursuant to the BL and its related regulations, a foreign bank applying to establish a branch in Taiwan shall provide information on whether it has been involved in any material incompliance, irregularities or disciplinary action within the previous 5 years.
- The SEA and its related regulations require a foreign securities firm applying to establish a branch in Taiwan to provide information that such firm has not been subject to any disciplinary action by the securities regulator in its home country within the previous 2 years.
- Pursuant to the IL and relevant regulations, a foreign insurance company applying to establish a branch in Taiwan is required to provide information that no material disciplinary action was taken against it by the insurance regulator in its home country within the previous 3 years.

Furthermore, a “responsible person” (such as a director or a manager) of a financial institution is required to meet the qualification requirements as set out by the FSC. Such requirements generally include, among others, that such person shall not have committed or conducted certain offences or misconduct within a certain period of time. For financial institutions such as a bank or an insurance company, the qualification requirements for the “responsible person” also apply, under which a person shall not serve as a responsible person if there has been factual evidence showing that the person has engaged in, been involved in, dishonest or improper activities which indicate that he/she is unfit. In practice, a person, before serving as a responsible person of a financial institution, will be required to: (a) issue a declaration to the FSC specifying that he/she has met all the qualification requirements pursuant to applicable laws and regulations; or (b) provide necessary documents or information regarding the satisfaction of the qualification requirements to the FSC upon the FSC’s request.

In addition, the FSC in practice has the power to require a financial institution to provide any such documents/information (including without limitation, information about past misconduct/non-compliance by the institution and/or its employees) as the FSC may deem necessary during the licence/authorisation application process, even if the FSC’s rules or regulations do not expressly require such documents/information.

19. IS A FINANCIAL INSTITUTION IN TAIWAN UNDER ANY OBLIGATION TO REPORT TO THE TAIWAN REGULATOR(S) ANY MISCONDUCT/ NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

If a responsible person of a bank fails to meet any of the qualification requirements regarding misconduct/non-compliance (as discussed under Question 18 above) during his/her term of office, he/she is required to promptly notify the bank of such event. The bank should immediately report the same to the FSC.

In addition to the reporting obligations regarding money laundering-related activities as discussed under Question 17 above, a bank shall also report to the Joint Credit Information Center (JCIC, an entity established for the purpose of collecting, processing and exchanging credit information among financial institutions in Taiwan) if any of the following has occurred on the
part of its employee: (a) such employee is discharged from his/her job through an FSC disciplinary action due to his/her misconduct; or (b) a court’s final and unappealable decision has confirmed the facts of such employee’s misconduct.

Furthermore, the FSC’s regulations require a bank to report to the judicial policeman offices, MJIB and/or JCIC if certain events occur in respect of any of the deposit accounts opened with the bank. Such events include, without limitation:
- a deposit account is opened under a fake name;
- a deposit account is a “Watch-Listed Account” as designated by the court, prosecutors or judicial policeman offices;
- the holder of a deposit account frequently applies to open deposit accounts with the bank during a short period of time without providing any reasonable explanation to the bank;
- the holder of a deposit account applies for a transaction, the nature of which is apparently unfit for such holder in terms of his/her age or other background;
- the contact information provided by the holder of a deposit account cannot be reasonably verified;
- a deposit account has been reported by other financial institutions or the general public as one that has been/is being used by a suspect of a felonious offence;
- a deposit account has just been resumed from the status of a dormant account and is involved in unusual transactions;
- a deposit account is involved in transactions appearing to be money laundering activities; and
- a deposit account is used to conduct transactions as determined by the relevant authorities or financial institutions to be suspicious or unusual.

20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

The MLCA requires staff or managers in charge of financial institutions, including banks, credit card companies, insurance companies, securities brokers and futures brokers etc, to report to the authority or to the Money Laundering Prevention Center if there is a suspicious situation of money laundering by persons or legal entities.

Moreover, according to the corporate governance best practice principles issued by the local self-regulatory organisations, the internal audit personnel and chief legal compliance officer of a financial institution shall immediately report to the FSC if their suggestion to correct and/or improve material defects of the internal controls, non-compliance or irregularity is not adopted by the management of such institution and, as a result, may cause significant loss to such institution.

21. HOW ARE HEDGE FUNDS REGULATED?

On 2 August 2005, the FSC promulgated the Regulations Governing Offshore Funds (Offshore Funds Regulations) pursuant to the Securities Investment Trust and Consulting Act, which provide detailed implementation rules regarding the offer, distribution and sale of offshore funds in Taiwan through public offering or private placement under certain conditions. Although there is no definition given to hedge funds to date, foreign hedge funds are subject to the Offshore Funds Regulations.

For an offshore hedge fund to be offered in Taiwan through public offering, it must be approved or effectively registered with the FSC, and a qualified master agent and distributors must be appointed. The fund should also meet certain conditions, including that its derivative transactions and investments in PRC-related securities shall not exceed the limits prescribed by the FSC.

For an offshore hedge fund to be offered by private placement, it must be a securities investment trust fund, and the qualifications and the number of offerees should meet the criteria prescribed by the FSC. Furthermore, under the Offshore Funds Regulations, a report regarding the basic information of the fund by private placement should be filed with the Securities and Investment Trust and Consulting Association of the R.O.C. with a copy to the CBC after all payments of the subscription price have been made.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

There are no significant reforms currently proposed in Taiwan.
1. WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN THAILAND?

The main bodies are:
- Ministry of Finance (MOF);
- Bank of Thailand (BOT);
- Securities and Exchange Commission of Thailand (SEC); and

2. WHAT DOES EACH OF THESE BODIES REGULATE?

The MOF is responsible for overseeing various matters concerning public finance, taxation, the treasury, government property, operations of government monopolies and revenue-generating enterprises which can be legally operated only by the government. It is also authorised to provide loan guarantees for government agencies, financial institutions, and state enterprises. Financial institutions include companies licensed to carry out banking business, finance businesses and credit foncier businesses under the relevant legislation (including commercial banks, Thai branches of foreign banks, finance companies and credit foncier companies).

The BOT generally acts as the central bank of Thailand. It regulates and supervises financial institutions and has the power to investigate the operations of financial institutions. It formulates monetary policies in order to maintain monetary stability, manages international reserves and prints bank notes.

The SEC regulates the Stock Exchange of Thailand (SET), the Market for Alternative Investment and the Bond Electronic Exchange. It is responsible for the supervision and development of the primary and secondary markets of Thailand’s capital markets and securities-related participants and institutions. Its primary role is to formulate policies, rules and regulations regarding securities trading and the development of securities businesses and relevant activities and to prevent unfair securities trading practices. The SEC also oversees the trading of futures and options under the operation of Thailand Futures Exchange PCL, which is a subsidiary of the SET.

The OIC regulates the insurance industry which includes both Thai and foreign insurance companies operating in Thailand. The OIC has the power to issue licences for insurance companies, agents and brokers and to take disciplinary action against them. The OIC is also responsible for ensuring that all insurance companies meet the legal and financial requirements.

There are also other specialised regulatory bodies with supervisory functions in specific areas of the financial services sector, such as the Agricultural Futures Trading Commission, which is a regulatory body supervising the Agricultural Futures Exchange of Thailand.

3. WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN THAILAND?

As a civil law jurisdiction, Thailand has a number of statutes which regulate specific industries or businesses. The laws regulating the financial services sector are derived mainly from the following Acts:
- Financial Institutions Businesses Act 2008 (FIBA);
- Currency Act 1958 (as amended);
- Exchange Control Act 1942 (as amended);
- Securities and Exchange Act 1992 (as amended) (SEA);
- Derivatives Act 2003;
- Life Insurance Act 1992 (as amended) (LIA);
- Non-Life Insurance Act 1992 (as amended) (NLIA);
- The Trust for Transactions in Capital Market Act 2007;
- Provident Fund Act 1987; and

The relevant government agencies are empowered under these Acts to issue subordinate legislation in the form of Royal Decrees, Ministerial Regulations, Ministry Notifications, Notifications and Circulars of the BOT and Notices of Competent Officers. The detailed requirements of the law and the procedures to be followed are contained in the subordinate legislation and, as such, they form an important part of the law.

4. DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?

No. Each regulatory body is empowered to take action against relevant individuals or entities pursuant to the terms and ambit of the specific authority entrusted to it by the relevant legislation. In certain cases, a regulatory body might be required to use its
enforcement powers together with another regulatory body. In other cases, the power to take a specific action will be conditional upon obtaining the approval of another regulatory body (e.g., an order to suspend the operation of a commercial bank can be made by the MOF following the recommendation of the BOT).

5. **WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?**

Each regulatory body has the statutory power to monitor and investigate unusual transactions or acts of the individuals or entities under its supervision as outlined below:

<table>
<thead>
<tr>
<th>POWERS</th>
<th>MOF AND BOT</th>
<th>SEC</th>
<th>OIC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who conducts investigations</td>
<td>Officers/inspectors appointed by the MOF and the BOT, the Supervision Group, Financial Institution Policy Group or Legal and Litigation Group</td>
<td>Enforcement Department</td>
<td>The Insurance Commissioner or any other OIC authorised officer</td>
</tr>
<tr>
<td>Who are required to assist in investigations</td>
<td>Any person</td>
<td>Any person</td>
<td>Any person</td>
</tr>
<tr>
<td>Require production of records and documents</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Require a party to answer questions or provide information</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Conduct interviews</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Conduct searches at premises</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Statutory power to compel production of evidence and/or attendance of witnesses</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Consequences of non-compliance with the above investigation requirements</td>
<td>Criminal offence punishable with a fine or imprisonment, or both</td>
<td>Criminal offence punishable with a fine or imprisonment, or both</td>
<td>Criminal offence punishable with a fine or imprisonment, or both</td>
</tr>
</tbody>
</table>

6. **ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?**

Under the FIBA, it is the responsibility of any person (including an individual or institution under investigation and an investigation officer) who/which has obtained sensitive and confidential information from an investigation by the MOF or BOT to refrain from disclosing such information to any other person, unless the disclosure is: (a) within the scope of an investigation officer’s duties; (b) made for the benefit of an investigation; or (c) made during the course of a trial.

The SEA provides that any confidential information acquired from a SEC investigation by any person (including an individual or institution under investigation and an officer of the SEC), which under normal circumstances should not be disclosed, should be kept confidential. As a matter of practice, the officers of the SEC are diligent in ensuring that information obtained is kept confidential in order to avoid any adverse effect on the stock market or the reputation of the persons investigated.

There are no specific provisions that require any person (including an individual/institution under investigation, the OIC or its officers) to keep confidential any information obtained during the course of an investigation or the fact that an investigation was carried out. In practice, however, the officers conducting the investigation are likely to keep all information received during the process confidential.

In general, any person who/which discloses information obtained during an investigation might be liable for civil action under the laws relating to wrongful acts, which is similar to tortious liability under common law.
7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCrimINATION AND LEGAL PROFESSIONAL PRIVILEGE?

The laws regulating financial services do not specifically provide any protective measures for persons being investigated by the regulatory bodies. In general, persons being investigated by these regulatory bodies do not have a right to legal representation until official criminal charges are brought against them.

With regard to privilege against self-incrimination, the Thai Constitution provides that a person has the right to refuse to make any statement which might subsequently result in charges being brought against him/her/it for a criminal offence.

8. CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

Yes, the regulatory bodies are entitled to use all of the information received in investigations in subsequent disciplinary, criminal or civil actions against the individual or entity investigated or any other person incriminated.

9. WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?

The table below sets out the actions that the MOF, the BOT, the SEC and the OIC are entitled to take in exercising their regulatory functions:

<table>
<thead>
<tr>
<th>BODIES</th>
<th>ACTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOF</td>
<td>▪ Order the BOT to prepare and submit reports concerning the business operation of all or particular finance companies</td>
</tr>
<tr>
<td></td>
<td>▪ Appoint inspectors of commercial banks for the purposes of examining and reporting on the affairs and assets of commercial banks</td>
</tr>
<tr>
<td>BOT</td>
<td>▪ Order any financial institution to submit reports concerning its business operation</td>
</tr>
<tr>
<td></td>
<td>▪ Order any financial institution to rectify any non-compliance relating to its operations (eg, to maintain its cash reserve at the prescribed ratio, to make provision for doubtful assets, to record its deposits and borrowings in its accounts in a proper manner)</td>
</tr>
<tr>
<td></td>
<td>▪ Order any financial institution to increase or decrease its capital, which if not complied with, will be deemed to be a resolution of the shareholders’ meeting of that institution</td>
</tr>
<tr>
<td></td>
<td>▪ Seize or attach property of any individual or financial institution who/which commits certain criminal offences, or any person who employs or aids another in committing certain criminal offences</td>
</tr>
<tr>
<td></td>
<td>▪ Request the Criminal Court or the police to issue an order to restrain an individual who has committed a certain offence from leaving Thailand</td>
</tr>
<tr>
<td>MOF and BOT</td>
<td>▪ Order any director, officer, employee, auditor or other representative of a financial institution or a financial institution’s debtor to testify or to deliver copies of or produce the actual books of accounts, documents or other evidence concerning the affairs, assets and liabilities of the financial institution in question</td>
</tr>
<tr>
<td></td>
<td>▪ Enter any business premises of a financial institution, its debtors or any other person to examine the affairs, assets and liabilities of such person, including documents, evidence or information relating to transactions involving the financial institution in question</td>
</tr>
<tr>
<td></td>
<td>▪ Enter any premises where a criminal offence is reasonably suspected to have been committed and seize or attach documents or things connected with the commission of such offence for inspection or prosecution purposes</td>
</tr>
</tbody>
</table>
## 10. WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?

The regulatory bodies have the right to impose the following sanctions:

<table>
<thead>
<tr>
<th>BODIES</th>
<th>ACTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MOF and BOT</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Issue an order to withdraw the licence of or to close a financial institution</td>
</tr>
<tr>
<td></td>
<td>Issue an order to dissolve a financial institution</td>
</tr>
<tr>
<td></td>
<td>Issue an order to take control of the operations of a financial institution</td>
</tr>
<tr>
<td></td>
<td>Issue an order to suspend the operations of a financial institution entirely or partially for a temporary period</td>
</tr>
<tr>
<td></td>
<td>Remove directors of a financial institution and appoint replacement directors</td>
</tr>
<tr>
<td><strong>SEC</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Revoke or suspend the licence of a securities company or dissolve the securities company</td>
</tr>
<tr>
<td></td>
<td>Remove and replace the directors of a securities company</td>
</tr>
<tr>
<td><strong>OIC</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Remove the directors, managers or persons in charge of the operations of an insurance company and appoint replacements</td>
</tr>
<tr>
<td></td>
<td>Advise and consult with the MOF on whether or not to issue or to revoke the licence of an insurance company</td>
</tr>
<tr>
<td></td>
<td>Appoint a control committee to manage the affairs of and represent an insurance company</td>
</tr>
</tbody>
</table>
11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?

It is only possible to negotiate with a regulatory body to reach a settlement in relation to certain criminal offences. The relevant regulatory body will appoint a settlement committee, which is empowered to negotiate a settlement for such criminal offences. In practice, such committee will request and consider information from the wrongdoer, consider the severity of the criminal offence committed and impose a fine as it deems appropriate. However, if the committee considers that the wrongdoer should be subject to imprisonment, then settlement will not be permitted.

12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?

MOF, BOT, SEC and OIC decisions or orders which are not related to criminal prosecutions are deemed to be administrative orders (as defined in the Administrative Procedure Act 1996 and the Act on the Establishment of the Administrative Court and Administrative Procedure 1999) and can be revoked by the Administrative Court on the grounds of ultra vires, illegality or procedural unfairness.

Criminal decisions may be appealed within the Criminal Court hierarchy.

13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (EG, INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENITION?

The SEC provides that misconduct in the securities market amounts to a serious criminal offence. The SEC is entitled to institute criminal proceedings against parties engaging in market misconduct which, on conviction, may result in imprisonment of up to 2 years and/or a fine not exceeding twice the amount of the benefit received (or which would have been received), but in any case not less than Baht 500,000.

The Derivatives Act provides that misconduct involving the futures market amounts to a serious criminal offence which carries a term of imprisonment of up to 5 years and/or a fine of the greater of Baht 1 million or twice the amount of the benefit received (or which would have been received).

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?

There are no provisions in the specific Acts mentioned under Question 3 above which grant civil remedies to investors. The general rule is that an investor seeking to claim remedies will need to exercise his/her right under general law (pursuant to the Civil and Commercial Code). In most cases, any claim would be for compensation arising from a breach of contract or a wrongful act.

In respect of the insurance industry, policyholders may take civil action or commence arbitration proceedings against an insurance company. The OIC has established a set of arbitration rules and procedures to govern disputes between insurance companies and policyholders.

15. DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?

The police are not usually involved in the investigation process as each regulatory body has the authority to conduct its own investigations. If the conclusion is reached that a criminal offence is likely to have been committed, the regulatory body will file a complaint with the police, which will then proceed to investigate the matter further.

The Economic and Technology Crime Suppression Division of the Royal Thai Police (ETCS) has the power to oversee and investigate economic crimes (such as fraudulent transactions in relation to trading and share market manipulation), particularly where the allegations are complex and involve large sums of money. The authority of the ETCS is similar to that of the ordinary police save that the ETCS has expertise in economic crimes and matters.

The Department of Special Investigation (DSI) under the jurisdiction of the Ministry of Justice is a unique special investigative agency set up for the surveillance, deterrence and prevention of organised criminal activities. Amongst other things, the DSI has specific powers to investigate financial and banking fraud under the FIBA, the Exchange Control Act and the Bank of Thailand Act.

16. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?

The SEC has entered into bilateral co-operative agreements with regulatory bodies in Argentina, Australia, Brazil, Chile, China, Hong Kong, India, Indonesia, Israel, Laos, Luxembourg, Malaysia, the Republic of Korea, Singapore, South Africa, Sri Lanka, Taiwan, the United Arab Emirates and Vietnam. Thailand is also a member of the International Organisation of Securities Commissions (IOSCO). The SEC is a signatory to the IOSCO’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, joining securities and derivatives regulators around the world to enhance multilateral information sharing.

17. WHICH REGULATORY BODIES ARE EMPOWERED TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

The Office of the National Anti-Corruption Commission (NACC) is empowered to investigate and combat corruption. It has the right to inspect and seize assets of corrupt politicians or government officers, which may include officers of the regulatory bodies in the financial services industry. The NACC is also empowered to petition for the removal of such officers and/or request the Public Prosecutor to file charges against them. In investigating and combating corruption, the NACC has access within the financial services industry to any information concerning any persons suspected of having engaged in corruption.

According to the Anti-Money Laundering Act 1999 (AMLA), the Anti-Money Laundering Office (AMLO) is in charge of investigating and prosecuting money laundering offences, which include embezzlement/cheating and fraud involving assets, acts of dishonesty or deception and offences relating to terrorist financing.
18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/ NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORIZATION APPLICATION PROCESS?

A person who applies to a regulatory body for a licence to operate a business will be required to have certain qualifications as described under the relevant law. There is no requirement for an institutional applicant to report past misconduct/non-compliance. However, an individual who is the director, manager or authorised person of the applicant must not have been imprisoned by a court for a property-related offence committed with dishonest intent.

19. IS A FINANCIAL INSTITUTION IN THAILAND UNDER ANY OBLIGATION TO REPORT TO THE THAI REGULATOR(S) ANY MISCONDUCT/ NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

The AMLA requires a financial institution to report to the AMLO if it discovers a suspicious transaction made by a client. For the purposes of the AMLA, “financial institutions” include companies licensed to carry out banking businesses, finance businesses, credit foncier businesses, securities businesses and insurance businesses.

In addition, the Code of Conduct dated 3 August 2008 issued by the BOT (Code of Conduct) sets out compliance guidelines for financial institutions to follow. The Code of Conduct requires financial institutions to establish internal units to work on their compliance with the Code of Conduct and requires high level executives/boards of directors of financial institutions to set internal rules and policies on compliance. Under the Code of Conduct, each financial institution has the duty to make an Annual Compliance Report (ACR) which must contain:

- the results of a review of the compliance policy of the previous year;
- any misconduct, breach or non-compliance of any laws and/or regulations; and
- any counter-measures taken to remedy such misconduct, breach or non-compliance.

A financial institution is required to submit the ACR to the BOT within 90 days from 31 December of each year, or within 30 days from the first board of directors meeting of the year, whichever falls first.

Furthermore, a financial institution must report the following events to the BOT immediately upon discovery of such events:

- non-compliance of the board of directors or high level executives (in the case of a branch of a foreign bank, the foreign bank is required to report only the non-compliance of the highest three levels of executives); and
- other non-compliance which a financial institution deems to be material and which reaches or exceeds the minimum threshold of damages that each financial institution must set for itself.

A financial institution must submit to the BOT information on the counter-measures it has taken to rectify the non-compliance, within 15 days of the rectification.

20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING?

Under the SEA, auditors who discover any suspicious circumstances during the course of auditing a securities company or a public limited company are required to disclose such anomalies to the audit committee of the company for further investigation.

Under an AMLO regulation, the government may offer a reward to a person who provides information leading to the arrest and conviction of an offender. The reward is usually a portion of the assets seized by the government and is given following the final judgment of the court.

21. HOW ARE HEDGE FUNDS REGULATED?

There are no specific laws regulating hedge funds in Thailand. Therefore, strictly speaking, hedge funds are prohibited from operating as such unless their operations are exempt from regulation. This may be the case if participation is open to a limited number of institutional investors.

The conduct of asset management operations is a restricted business under Thai law and can only be carried out upon obtaining a licence from the relevant authority (mainly the MOF, acting upon the recommendation of the SEC). The SEC has introduced a single licence scheme which allows licence holders to engage in a full range of securities and derivatives fund management businesses.

However, an offshore hedge fund is entitled to invest in Thailand and in doing so, its investment activities in Thailand must comply with the laws and regulations that apply to all foreign investors in general, such as exchange control regulations and other monetary policies in force at the relevant time.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

There are no significant reforms currently on the horizon.
VIETNAM
VNA LEGAL

1. WHAT ARE THE MAIN BODIES RESPONSIBLE FOR REGULATING FINANCIAL SERVICES IN VIETNAM?

The main bodies are:

- Ministry of Finance (MOF);
- State Securities Commission (SSC); and
- State Bank of Vietnam (SBV).

2. WHAT DOES EACH OF THESE BODIES REGULATE?

MOF
Generally, the MOF is responsible for state finances, the state budget, taxation, charges, fees and other state budget revenues, the national reserve, state financial funds, financial investments, enterprise finance and financial service activities, customs, accountancy, independent audits and pricing nationwide, securities, insurance, and state management over public services in the finance sector.

The MOF has the following responsibilities in relation to the financial management of banks, non-bank financial institutions and other financial services institutions:

- submit to the government and/or the Prime Minister draft legal instruments concerning the financial services sector and strategies on development planning on matters under its authority;
- promulgate legal instruments under its authority;
- direct, guide, inspect and take responsibility for implementation of legal documents, strategies and plans on matters under its authority after they are approved;
- manage, inspect and supervise the implementation of the state’s regulations on insurance, securities and the stock exchanges;
- issue, suspend and withdraw operation licences of enterprises engaged in the insurance and securities businesses;
- perform state financial management over the operations of the SBV, commercial banks, policy banks and state-run credit institutions and financial organisations; and
- negotiate and sign international finance agreements under the authorisation of the State President or the Prime Minister.

SSC
The SSC is a body under the authority of the MOF. It is generally responsible for assisting the Minister of Finance in undertaking the function of state administration of securities and the securities market, directly managing and supervising securities and securities market activities, and managing securities-related services. The SSC has various duties and powers under the Law on Securities, including:

- submitting to the Minister of Finance for promulgation within his/her own authority, or for promulgation by a competent authority, legal instruments on securities and the securities market and strategies, plans and policies on securities and the securities market;
- organising the implementation of the strategies, plans and policies for the development of the securities market;
- issuing, extending and withdrawing licences and certificates relating to securities activities and the securities market and approving amendments to such licences and certificates;
- administering and supervising the operations of the stock exchanges, securities trading centres, securities depository centres and their subsidiary institutions and temporarily suspending trading and depository operations of such bodies when there are indications of an adverse impact on the lawful rights and interests of investors; and
- conducting inspections and supervision over administrative breaches and resolving complaints and denunciations relating to securities activities and securities market activities.

SBV
The SBV is a ministerial-level government agency which oversees monetary and banking activities and public services. The SBV also acts as the representative of the owner of state capital portions in state owned enterprises operating in the banking field, and is the central bank of Vietnam.

The SBV’s specific powers and duties include:

- stabilising the value of money, ensuring the safety of banking operations and the systems of credit institutions, and ensuring the safety and effectiveness of the national payment system;
- submitting to the government and/or the Prime Minister draft legal instruments on monetary and banking activities and developing strategies and plans relating to such activities;
guiding, inspecting and taking responsibility for the implementation of legal instruments, strategies and plans within the scope of its authority;

- formulating an annual inflation target for submission by the government to the National Assembly for decision, and organising the implementation of the target;

- organising, managing and developing monetary markets;

- organising a statistics system for making monetary and banking forecasts and publishing information on currency and banking in accordance with law;

- granting and withdrawing permits for the establishment and operation of credit institutions, granting and withdrawing permits for banking activities of other organisations, deciding on the dissolution and approving the splitting, separation, consolidation or merger of credit institutions;

- examining and inspecting banking activities, controlling credit, inspecting, supervising and handling complaints and denunciations, combating corruption and handling legal violations relating to monetary and banking activities;

- implementing special measures to deal with credit institutions which have committed serious breaches of the law on currency and banking, which are suffering from financial difficulties, or which are likely to place the safety of the banking system in danger;

- managing the borrowing and repayment of foreign debts by enterprises; and

- managing foreign exchange, foreign exchange related activities, and the import and export of gold.

3. WHAT IS THE SOURCE OF FINANCIAL SERVICES REGULATION IN VIETNAM?

The principal law governing the insurance industry in Vietnam is the Law on Insurance Business together with its implementing legislation. Supplemental regulations are also issued by the government, the Prime Minister, the MOF and the SSC.

The principal law governing the banking industry in Vietnam is the Law on Credit Institutions and the Law on State Bank of Vietnam, together with their implementing legislation. Supplemental regulations are also issued by the government, the Prime Minister and the SBV.

4. DO ALL THE REGULATORY BODIES DESCRIBED ABOVE HAVE THE SAME POWERS OF ENFORCEMENT?

No. See Question 2 above and Questions 5 and 10 below.

5. WHAT POWERS OF INVESTIGATION DO THESE REGULATORY BODIES HAVE?

**MOF**

The MOF may conduct inspections and checks of insurance business activities based on the approved annual plan of the MOF, or when there is an indication of a breach of the law.

**SSC**

The inspectorate of the SSC may, among other things:

- request the entity being inspected to supply information, data (including electronic data), written reports and explanations relating to the issues covered by the inspection, and request any organisation or individual with information or data relating to those issues to supply such information or data;

- request an authorised person to seal and temporarily detain data (including electronic data), source documents and securities relating to any breach of the law on securities and the securities market, when it is considered necessary to immediately stop the breach or to verify the evidence involved in the inspection;

- request an authorised person to freeze cash accounts, securities accounts, mortgaged assets or pledged assets relating to conduct that is in breach of the law on securities and the securities market, when: (a) it is deemed necessary to verify circumstances which will provide a basis for a decision on dealing with the breach; or (b) such freezing would immediately prevent dissipation of money, securities, mortgaged or pledged assets;

- issue a decision dealing with a breach, or recommend that an authorised person issue such a decision (and inspect the implementation of the decision); and

- transfer the file on a breach to an investigative body within 5 days from the date of discovery of a possible criminal offence.

**SBV**

The banking inspection body of the SBV may, among other things:

- inspect the observance of the law on currency and banking operations and the implementation of provisions provided for in the licences for conducting banking transactions;

- consider and evaluate the level of risks, ability to control risks and financial condition of entities subject to banking inspections;

- propose or request entities subject to banking inspections to take measures to limit, minimise or deal with risks in order to ensure the safety of banking operations and prevent any acts resulting in a breach of the law; and

- discover, prevent and deal with in accordance with its authority, or make proposals for relevant competent bodies to deal with, breaches of the law on currency and banking.

Pursuant to Vietnamese law, agencies, organisations and individuals must comply with requests from the MOF, the SSC and the SBV. Failure to provide the requested information or documentation, provision of insufficient or inaccurate information or documentation, provision in an untimely manner or the destruction of information or documentation by such persons can, depending on the nature and severity of the violation, give rise to administrative sanctions or discipline, or criminal liability. In addition, such persons can be liable for compensation where damage is caused by their actions or inaction.

6. ARE THERE ANY PROVISIONS REQUIRING INVESTIGATIONS OR INFORMATION DISCLOSED DURING THE COURSE OF INVESTIGATIONS TO BE KEPT CONFIDENTIAL?

Employees of regulatory bodies are required to keep information and documents relating to ongoing inspections secret, where no
official conclusion has been made. If they disclose such information and documents (except where permitted by law), they will be disciplined or examined for civil or criminal liability.

7. ARE THERE PROTECTIONS AVAILABLE WHEN RESPONDING TO INVESTIGATIONS BY THESE REGULATORY BODIES, EG, RIGHT TO LEGAL REPRESENTATION AT INTERVIEWS, PRIVILEGE AGAINST SELF-INCrimINATION AND LEGAL PROFESSIONAL PRIVILEGE?

Individuals and entities must co-operate with any investigation carried out by the regulatory bodies. They are required to supply information or documents requested in a prompt, full and accurate manner, and are responsible for the accuracy and truthfulness of such information and documents. There are no exemptions from the duty to co-operate and provide information on the ground of potential self-incrimination or legal professional privilege.

The right to legal representation is not available at interviews conducted by such regulatory bodies through the relevant investigative bodies under the Ministry of Public Security (ie, the police).

8. CAN INFORMATION OBTAINED BY THESE REGULATORY BODIES IN THE COURSE OF THEIR INVESTIGATIONS BE USED FOR ANY OTHER PURPOSE, EG, IN PROCEEDINGS IN A COURT OF LAW?

Yes. The information obtained by these regulatory bodies in the course of their investigations can be used in criminal proceedings. If criminal activity is suspected, the regulatory bodies (under their governing legislation) must transfer relevant information and documents to investigating bodies or the public prosecution office for their consideration on whether to institute criminal proceedings. This is also specifically required by the Criminal Proceedings Code, which provides that regulatory bodies are required to co-ordinate with investigating bodies and the public prosecution office in preventing and fighting crimes.

The MOF, the SSC and the SBV can share with each other information obtained during their own investigations.

9. WHAT ACTIONS MAY THESE BODIES TAKE IN EXERCISING THEIR REGULATORY FUNCTIONS?

Please refer to Questions 2 and 5 above and Question 10 below.

10. WHAT DISCIPLINARY SANCTIONS MAY THESE REGULATORY BODIES IMPOSE?

Generally speaking, the main forms of penalty that can be imposed by these bodies for an administrative offence are either a warning or a fine. Additional penalties as set out below may also be imposed. However, the law is not always clearly expressed and the meaning of the penalties is not always clear.

Securities

With respect to securities-related breaches, the SSC may impose a penalty in the form of deprivation of the right to use the certificate of registration for operation of representative offices, or the certificate of securities practice, for a defined period from 3 to 24 months.

Depending on the nature and gravity of the breach, the SSC may issue one or both of the following additional penalties:
- suspension for a defined term of various activities, such as activities involving listed securities, registering for securities transactions, public offers to acquire, trading and supplying securities services, or activities of branches of foreign fund management companies in Vietnam, representative offices or securities depositories; or
- confiscation of the material evidence and means used for committing the administrative breach.

The SSC may also require one or more of the following measures to be taken to remedy the consequences of the breach:
- recall of securities offered for sale or improperly issued securities, or return of the value of the securities to investors;
- return of securities and amounts which belong to clients;
- withdrawal or correction of information published;
- remittance of the illicit earnings from an offence to the state budget or to specified parties;
- compliance with the registered plan for public bidding for securities;
- purchase of the remaining shares or closed fund certificates after a public bid;
- prohibition from exercising shareholder voting rights attached to any shares obtained from an offence;
- transfer of securities in order to reduce the security holding to comply with any legal restrictions on the percentages of securities that may be held (by, for example, foreign investors, securities companies or fund management companies);
- approval at the shareholders’ general meeting for any change of purpose or plan on using capital obtained from the sale of securities where such change of purpose or plan has not been approved in accordance with law;
- deposit of securities or separate management of assets, capital and securities as required by law; or
- provision of explanations and supply of information and audit information where such information has not been supplied in accordance with law.

Banking

Depending on the nature and seriousness of the breach, the SBV may (in addition to issuing a warning or imposing a fine):
- seize the evidence and the means used for committing the administrative breach; or
- recommend that the competent authorities suspend one or more operations relating to the administrative breach, with or without a time limit.

The SBV may also enforce compliance with the law and require the party in breach to remedy the breach.

Insurance

Depending on the nature and seriousness of the breach, the MOF may (in addition to issuing a warning or imposing a fine):
- withdraw or suspend the operation licence of the insurance enterprise in question;
- order the party in breach to publish corrections to an incorrect announcement or restore to the original state what was altered by the administrative breach; or
- suspend operations for a definite term or temporarily narrow the scope (including geographical area) of operations.
The MOF may also enforce compliance with the law and require the party in breach to remedy the breach.

11. IS IT POSSIBLE TO ENTER INTO A SETTLEMENT TO RESOLVE ANY ENFORCEMENT ACTION TAKEN BY ANY OF THESE REGULATORY BODIES?

Whilst not specified in law, it is generally possible to work with and negotiate settlements with the regulatory bodies. It is highly unusual for such regulatory bodies to suspend or revoke an operating licence where the entity in breach works with them in good faith to resolve the breach.

12. ARE THERE PROVISIONS FOR PERSONS TO APPEAL AGAINST ANY ENFORCEMENT ACTION TAKEN BY THE REGULATORY BODIES AGAINST THEM?

Yes. If an individual or entity is dissatisfied with the decision of a regulatory body, he/she/it has a right to make a complaint to the regulatory body for an administrative review. If the administrative review is not completed within the specified time limit or the complainant disagrees with the outcome of the review, he/she/it may lodge a further complaint to a higher body or initiate an administrative lawsuit in court as prescribed by the law.

13. IS SECURITIES AND FUTURES MARKET MISCONDUCT (EG, INSIDER DEALING, MARKET MANIPULATION ETC) A CRIMINAL OFFENCE OR A CIVIL CONTRAVENION?

Securities and futures market misconduct (eg, insider dealing, market manipulation etc) is both a civil (administrative) contravention and a criminal offence.

Pursuant to Decree 108 on Penalties for Administrative Offences in Securities and the Securities Market Sector dated 23 September 2013 (which came into effect on 15 November 2013), a fine of between VND800 million and VND1,400 million may be imposed for breaches of regulations on prohibited transactions (ie, insider trading, engaging in fraudulent acts, use of untrue information to entice or induce purchase and sale of securities, or engaging in conduct or transactions that manipulate the securities market). Other forms of sanctions and remedial measures may also be imposed.

Pursuant to the Criminal Code:

- where a person intentionally discloses false information or conceals the truth related to securities offerings, listings, transactions and trading, and such information or concealment causes serious consequences (which term is not defined), such person may be subject to criminal sanction; and
- where a person knows information relating to a public company or a public fund (which has not been disclosed and may, if disclosed, greatly affect the price of securities of the public company or fund) and uses such information for securities trading, or reveals or provides such information or advises other persons to trade in securities on the basis of such information, thereby gaining substantial illicit profits (which term is not defined), such person may be also subject to criminal sanction.

14. WHAT CIVIL REMEDIES ARE THERE FOR INVESTORS?

Under the Law on Securities, any organisation or individual who suffers loss or damage as a result of conduct in breach of the law has the right (either individually or jointly with other organisations or persons who suffered similar loss or damage) to institute proceedings to claim compensation for the loss or damage.

Any dispute arising out of securities operations or securities market activities (including claims for compensation referred to above) may be referred to an arbitrator or a court.

Pursuant to the Law on Insurance Business and the Law on State Bank of Vietnam, any person or entity that causes damage to another in contravention of the relevant law is liable to compensate the party suffering damage. No specific form of compensation is stated in either law. However, pursuant to the Civil Code, a party can claim damages for breach of contract as well as non-contractual damages for infringement of his/her rights to property or other legitimate interests.

15. DO THE POLICE ASSIST THESE REGULATORY BODIES IN INVESTIGATIONS?

No. However, the police (ie, the Ministry of Public Security) will be involved in the investigation of cases involving criminal behaviour. The case may also be transferred by the regulatory body to the relevant police investigation bodies.

16. HOW DO THESE REGULATORY BODIES INTERACT WITH OVERSEAS REGULATORS?

Vietnam is a member of a number of international and regional organisations, including the International Monetary Fund, the World Bank and the Asian Development Bank. In addition, Vietnam co-operates with nations or regions in relation to banking operations. Vietnam has signed around 20 agreements with other countries on mutual legal assistance. These agreements stipulate the provision of assistance in criminal and civil matters. On 18 September 2013, the SSC became a full signatory to the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

17. WHICH REGULATORY BODIES ARE EMPOWERED TO INVESTIGATE AND COMBAT CORRUPTION, TERRORIST FINANCING AND MONEY LAUNDERING WITHIN THE FINANCIAL SERVICES INDUSTRY?

Corruption

The Central Steering Committee for Corruption Prevention and Combat (CSCCPC) is headed by the General Secretary of the Vietnam Communist Party’s Central Executive Committee. The CSCCPC has national responsibility for preventing corruption.

Money laundering

The Anti-Money Laundering Steering Committee (AMLSC) is headed by the Deputy Prime Minister, with the Governor of the SBV and a leader of the Ministry of Public Security as the deputy heads of the AMLSC. The members of the AMLSC are comprised of one leading member from each of the People’s Supreme Court, the People’s Supreme Procuracy, the Government Office, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Finance, the Ministry of Planning and Investment, the Ministry of Information and Communications, the Government Inspectorate, and the Ministry of Defence. The
AMLSC shall assist the Prime Minister with directing and co-ordinating the activities of the above ministries and branches to combat money laundering.

The SBV is the standing body of the AMLSC and the Governor of the SBV appoints a unit to be responsible for the work of combating money laundering, to assist the SBV, and to ensure the proper operation of the AMLSC. Such unit is the Anti-Money Laundering Agency. It has the right to require any body, organisation or individual to provide data, files or information on transactions over certain values specified in the law and, in particular, suspicious transactions.

The SBV co-ordinates with the Ministry of Public Security and other bodies to formulate and implement strategies, guidelines and policies to prevent and combat money laundering.

The Ministry of Public Security is responsible for investigating money laundering-related crimes, guiding other government agencies in conducting preliminary investigations of such crimes and advising the SBV on the results of its investigations.

The MOF, the Ministry of Construction, the Ministry of Justice, government agencies, people’s procuracies, people’s courts and people’s committees also have various degrees of responsibility for investigating, combatting and implementing the law on anti-money laundering within the ambit of their respective jurisdictions.

Terrorist financing
There are many government agencies involved in combating terrorist financing. Specifically, the National Anti-Terrorism Steering Committee is the body responsible for: (a) assisting the government and the Prime Minister with organising and directing anti-terrorism activities nationwide; (b) organising and carrying out inter-sector coordination in anti-terrorism activities; and (c) international cooperation on anti-terrorism activities. The Ministry of Public Security acts as the standing agency of the National Anti-Terrorism Steering Committee.

Provincial Anti-Terrorism Steering Committees are also established by relevant provincial people’s committees for: (a) assisting the people’s committees and their chairpersons with organising and directing anti-terrorism activities; (b) organising and carrying out inter-sector coordination in anti-terrorism activities; and (c) international cooperation on anti-terrorism activities. The provincial public security departments act as standing agencies of the provincial Anti-Terrorism Steering Committees.

However, the key agencies for investigating and combating terrorist financing are the Anti-Terrorism Forces, which are established under the Ministry of Public Security and the Ministry of National Defence. Where agencies, organisations and individuals detect terrorist activities, they are required by law to report them to the Anti-Terrorism Forces, or the nearest public security agencies, army agencies or people’s committees. Upon receiving reports, the public security agencies, army agencies and people’s committees must provide them to the Anti-Terrorism Forces. The Anti-Terrorism Forces must then process the relevant information and report it to their responsible ministry and the relevant provincial Anti-Terrorism Steering Committee. The Anti-Terrorism Forces may also apply urgent anti-terrorism measures to be implemented as prescribed by law.

In addition, the Anti-Money Laundering Agency under the SBV is responsible for transferring information to the competent investigating agency (namely the Ministry of Public Security, the Ministry of National Defence, the People’s Supreme Procuracy or the competent initial investigation agency as prescribed by law) when there are reasonable grounds for suspecting that any transaction mentioned in a report or information received relates to money laundering to fund terrorism. The competent investigating agency that receives such information is responsible for classifying and resolving the same in accordance with the law.

18. IS THERE ANY REQUIREMENT TO PROVIDE INFORMATION ABOUT PAST MISCONDUCT/ NON-COMPLIANCE BY A FINANCIAL INSTITUTION AND/OR ITS EMPLOYEES DURING THE LICENCE/AUTHORIZATION APPLICATION PROCESS?

There are no specific provisions under Vietnamese law requiring a financial institution to provide information about past misconduct/non-compliance by it and/or its employees during the licence/authorisation application process, other than the requirement to submit a criminal record check in the relevant application dossier for licensing for certain key personnel. However, relevant laws provide specific prohibitions on certain key persons of a financial institution (including members of the board of management / members’ council, inspectors/controllers and general directors (directors)) from having a criminal record, from having previously been sanctioned in relation to certain company management activities or from having relevant required licenses suspended.

19. IS A FINANCIAL INSTITUTION IN VIETNAM UNDER ANY OBLIGATION TO REPORT TO THE VIETNAM REGULATOR(S) ANY MISCONDUCT/ NON-COMPLIANCE WITH RULES AND REGULATIONS BY THE INSTITUTION/ITS EMPLOYEES/ITS CLIENTS?

There are no specific provisions under Vietnamese law requiring a credit institution to report to the Vietnam regulator(s) any misconduct/non-compliance with rules and regulations by it or its employees or clients per se. However, if the chairman or a member of the board of management or members’ council, the head or a member of the board of controllers, or a general director (director) of a credit institution no longer satisfies the criteria set by law for occupying those positions in a credit institution (including due to obtaining a criminal record or due to commission of certain offences in relation to company management), or he/she is deported from the territory of Vietnam, then such person automatically loses the right to occupy such position in the credit institution and loses his/her status within the credit institution. The board of management or members’ council of the credit institution must send a written report to the SBV within the required timeframe, detailing the reasons for the loss of right and evidencing that such person no longer occupies such position. It shall also carry out procedures in accordance with law to elect or appoint a person to the vacant position.

Pursuant to the Law on Securities and Circular 52 on Disclosure of Information on the Securities Market dated 5 April 2012 issued by the MOF, a securities company or a fund management company must make an extraordinary disclosure of information within 24 hours of the occurrence of the following events:

- when there is a decision to bring legal proceedings (either by a third party or by the securities company or fund management company), or a verdict or decision of a court against a member of the board of management, financial director, chief accountant,
head of the accounting department, a member of the inspection committee of the company, or the securities investment fund operator;

- when there is a decision to bring legal proceedings (either by a third party or by the securities company or fund management company), or a verdict or decision of a court against the company relating to the operation of the company;

- when the tax office has concluded that the company is in breach of the law on taxation;

- when the company receives a notice from a court accepting jurisdiction over a petition to commence enterprise bankruptcy proceedings against the company; or

- the practising certificate of a general director (director) or deputy general director (deputy director) of the securities company, public fund operator or securities investment fund company operator is revoked.

The securities company or fund management company must disclose the above events in its publication (which term is not defined), on the electronic information site of the company and through the information disclosure media of the SSC or the stock exchanges. Such disclosure must specify the event which occurred and its causes, and a plan and solution for remedying the problem (if applicable).

20. ARE THERE ANY LAWS OR REGULATIONS IMPOSING OBLIGATIONS ON PERSONS TO “WHISTLE-BLOW” OR DISCLOSE SUSPECTED FINANCIAL SERVICES-RELATED WRONGDOING WITHIN AN ORGANISATION?

Yes. There are various laws and regulations imposing obligations on a person to “whistle-blow” or disclose suspected financial services-related wrongdoing. Any person who is required to but does not disclose suspected financial services-related wrongdoing within an organisation will be subject to administrative or criminal liability.

Any person who knows a crime is being planned or carried out but fails to make this information known to the authorities is liable under the Penal Code. A person who has knowledge of a breach of regulations on loan provisions relating to the operations of credit institutions or the counterfeiting of banknotes, cheques, bonds and other valuable papers, but fails to report such information, may be subject to a warning, non-custodial reform for up to 3 years or a prison term of between 3 months and 3 years. A person who deliberately conceals the above breaches may be subject to non-custodial reform for up to 3 years or a prison term of between 6 months and 5 years.

Pursuant to the Law on Securities, custodian banks have an obligation to report to the SSC if they discover that a fund management company, a securities investment fund company or an affiliated organisation or individual is in breach of the law or the charter of the fund management company or securities investment fund company.

21. HOW ARE HEDGE FUNDS REGULATED?

The Law on Securities and its implementing regulations regulate both “public funds” (i.e., a securities investment fund which makes a public offer of certificates in the fund), which can be open or closed investment funds, and “members funds” (i.e., a securities investment fund with no more than 30 capital contributing members, all of which must be legal entities), which are closed investment funds. The establishment and management of open investment funds are further regulated by Circular No.183-2011-TT-BTC dated 16 December 2011 and the establishment and management of closed investment funds and member funds are further regulated by Circular No.224-2012-TT-BTC dated 26 December 2012. Both circulars are issued by the MOF.

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT REFORMS IN THE NEAR FUTURE?

Reform is likely to continue over the next few years. This reflects Vietnam’s status as a developing economy, the recent introduction of a securities market and the gradual integration of the economy into the global market.